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SELECTIONS FROM THE RECORDS

OF THE OFFICE OF THE

FINANCIAL COMMISSIONER, PUNJAB.

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CONTENTS.

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SELECTIONS FROM THE RECORDS

OF THE

FINANCIAL COMMISIONER'S OFFICE No. 37.

No. LXV.—PAPERS ON INDEBTEDNESS OF AGRICULTURISTS IN THE PUNJAB AND FORECLOSURE OF MORTGAGE.

PART I.

Papers on fluctuating Assessment.

No. 171 S.C., dated 3rd October 1879.

From—F. C. CHANNING, Esquire, Settlement Secretary to Financial Commissioner, Punjab,
To—The Secretary to Government, Punjab.

In original.
Settlement Officer, Rohtak's No. 210, of 29th May 1879.
Settlement Officer, Jhang's No. 90, of 9th July 1879.
Settlement Commissioner's No. 235, of 29th May 1879.
Settlement Officer, Karnál's demi-official of 8th August 1879.
Copies of Settlement Secretary's note of 15th August 1879.
Financial Commissioner's note of 30th August 1879.

IN your letter No. 1213, of 2nd April, your asked the Financial Commissioner to express his opinion on the question whether there are any tracts in the Punjab in which a system of adapting the land revenue to the variations of the season should be adopted on account of the scanty rainfall, you requested also that the opinions of some selected Settlement Officers might be obtained and forwarded. I am now directed to submit the papers noted on the margin, expressing the views of Mr. Lyall, and also of Messrs. Wace, Purser, Ibbetson, Steedman and Channing.

2. A separate reply will be sent to that part of your letter which asked for the Financial Commissioner's opinion on the proposal to invest the Courts of various grades with a summary jurisdiction; Mr. Lyall desires to give the subject mature consideration before replying.

No. 155 S., dated Simla, 10th July 1880.

From—W. M. YOUNG, Esquire, Secretary to Government, Punjab,
To—The Officiating Secretary to the Govt. of India, Home, Revenue and Agricultural Department.

I AM desired by the Hon'ble the Lieutenant-Governor to acknowledge the receipt of your No. 6-269, of 6th March 1879. In that letter the Lieutenant-Governor's opinion was requested on two points, *viz.*, (1) whether it would be expedient to invest the Courts of various grades in the Punjab with summary powers; and (2) whether there are any districts or parts of districts in the Punjab in which the plan of an assessment of land revenue varying with the season might be adopted with advantage. The two questions are entirely distinct, and in the present letter His Honor will confine himself to the expression of his views on the second alone. The opinions of the Financial Commissioner and of certain other Revenue Officers of the Province, noted marginally, which were obtained by Mr. Lyall at the request of the Lieutenant-Governor, and a volume of extracts from the records of this Office, compiled for the purpose of illustrating the steps so far taken in the Punjab in this direction, are herewith forwarded for the information of the Government of India.

Mr. Barkley. Major Wace. Mr. Purser. Mr. Fanshawe. | Mr. Channing. Mr. Ibbetson. Mr. Steedman.

2. From the historical sketch given in his memorandum by Mr. Lyall, which is supported in detail by the collection of selected papers, it will be seen that such a system as that to which allusion is made by the Government of India has been already introduced into several tracts in the seven districts forming the south-west corner of the Punjab. Except in the district of Montgomery, the new method of assessment has not been so long in force as to admit of an examination of the results; while the failure of the floods of the Ravi has made it more difficult than it would otherwise have been to compare the effect of the new method with that of the old. The system of crop rates on

lands irrigated from the Inundation Canals in Montgomery has, however, been a decided success. In theory, the Lieutenant-Governor is of opinion that the systems adopted with various local modifications of detail may be predicated to be advantageous both to Government and to the people, provided that the machinery required for their working is available, and at the same time neither too expensive nor oppressive. The question how far each system should be extended is one of degree, depending on the consideration of these three points. So far as regards the tracts where the systems have been introduced, the Lieutenant-Governor believes that the above conditions are fulfilled.

3. The extracts forming the selection forwarded show that the parts in the Province which have been brought under these methods are almost entirely dependent for cultivation on river-floods, inundation canals and wells, the rain-fall being so scanty as almost to preclude the possibility of cultivatiou without such aid. There are, however, other parts of the Punjab, removed from the benefits of rivers and canals and without wells, in which the rain-fall, though more copious as a rule than in the south-west, is yet exceedingly precarious, and to these, so far, no such plan has been applied. The tracts in question are to be found chiefly in the Hissár Division and in portions of the Gurgáon, Karnál and Ferozepore districts. The system of assessment which has hitherto been followed where the crops are uncertain and dependent on the amount of rain-fall, is to fix the revenue demand at a very moderate sum, which can be readily paid when there is any crop at all, and even when one crop has failed; when several bad seasons occur in succession, or when the grass of the country fails altogether for a considerable period, suspensions of the demand are granted, which may be converted into remissions. It has been suggested by some of the officers whose opinions have been asked, notably by Mr. Barkley, Mr. Ibbetson and Mr. Fanshawe, that in such tracts a cycle system of assessment should be introduced, as proposed by the Government of India; and the Financial Commissioner, Mr. Lyall, has expressed himself as somewhat in favor of such a system in these parts. Sir Robert Egerton is unable to agree with these opinions. He considers that the introduction of such a plan is neither necessary nor desirable, and he is disposed to doubt if it is even practicable. According to the present system the assessment is fixed by a special officer whose whole time is devoted for several years to enquire into the condition of the villages which he has to settle; any system of remissions by percentages, such as that suggested by the Government of India and favored by these officers, requires, to carry it out, an amount of attention and minute local knowledge which we cannot expect to find in the District Revenue establishments. The practical difficulties which surround the subject would, in His Honor's opinion, make it almost impossible to give effect to such a scheme, which would, moreover, cause a complete change in the present principles of assessment. For it is obvious that, if such remissions are to be given, the revenue should be assessed at a sum considerably higher than that at which it has now been fixed, under a system which takes into account the risks of bad years; inasmuch as under that now suggested, these will fall upon the Government only and not upon the people.

4. The question which has been referred for the Lieutenant-Governor's opinion has arisen from the consideration of the facts which have led to the passing of the Deccan Ryots Relief Bill; and the system suggested is put forward with the hope of saving the cultivator from having perpetual recourse to the money-lender. But His Honor considers that under any system of cash assessment a large proportion of the cultivators must be dependent upon the money-lenders for cash. The only plan to ensure the object in view, to prevent the cultivator becoming indebted to the money-lender in order to pay the Government demand, is to take the Government revenue in kind by appraisement or by actual division of the crop. The Lieutenant-Governor is aware that this system will involve an amount of official interference which is objectionable. But the investigations made under any system of remissions by percentages must also be inquisitorial, while from their uncertain and intermittent nature they are more likely to lead to abuses than a system of appraisement or actual division of the crop, if regularly carried out. This is the only plan which the Lieutenant-Governor would recommend to be substituted for the existing

method of cash assessments; for it is the only plan which can effectually prevent the cultivator being forced to borrow the cash required to meet the Government demand; while at the same time it can be managed so as to cause profit instead of loss to Government, as has been proved by the experience of years in such tracts as the Gandapur country of the Dera Ismail Khan district, where, however, the plan was introduced from other considerations than the uncertainty of the crops. Such a system would be required for exceptional cases only, and would not need to be extended to the country generally. Under it the cultivator would have to deliver a certain quantity of grain in satisfaction of the Government demand, and would be saved from all the risks of his present transactions with the money-lenders; and on the other hand, Government would never need actually to take and store the grain or other produce, as there would always be plenty of traders ready to buy it at the valuation of the appraiser, or at such a price as might be fixed.

Note by J. B. LYALL, Esquire, Financial Commissioner, Punjab, dated 30th August 1879, in reply to paragraph 3 of Secretary to Government, Punjab's No. 1213, of 2nd April, and paragraph 3 of Government of India's No. 6-269, of 6th March 1879.

IN the earlier days of the Punjab Administration, when the first regular settlements were made, the policy of fixed assessments was held very strongly by the leading Revenue authorities of the Province, variable or fluctuating assessments, which were specially recommended for certain tracts in the south of the Punjab, by officers like Colonel Hamilton, were at once condemned as demoralising to the people and to our establishments. This view is no longer held so strongly as it was, and for several years past, some of us have thought that a plan of assessment of the land revenue which would make the demand vary with the seasons, was the thing wanted in certain parts of the Punjab. I think it may be useful if I give an account of the various occasions on which the question has come up in the last eight years.

2. In January 1872, on being appointed to officiate as Settlement Commissioner, I had to visit the Mamdot Ilaqua and Muktsar tahsíl of Ferozepore on the left bank of the Sutlej, and the Dípalpur and Pákpattan tahsíls of the Montgomery district, which lie on the opposite bank. Mr. Purser was then conducting a revision of settlement of these tracts, and the difficulties of a fixed annual demand for a term of years was very apparent. In the whole of this country the rain-fall is small and uncertain, yet in Muktsar, in the absence of wells or canals, the cultivation depended entirely on the rain-fall, and owing to the lightness of the soil and the manner in which a coating of sand keeps the moisture suspended in the subsoil, the rain was sufficient in most years to secure good crops in one or both harvests. But while the settlement was in progress the rain-fall had failed more or less completely for two successive years, and almost all the able-bodied population had gone off to other districts to work as diggers on the Rupar canal works, or as cart, bullock or camel contractors on the high roads.

3. Again, in the greater part of Mamdot, and in the river-side tracts of Dípalpur and Pákpattan, there was very little cultivation dependent on rain: the cultivation was mostly "sailába," *i.e.*, it depended upon the moistening of the land by the "sailáb" or autumnal floods from the Sutlej: a small part of this sailába cultivation was also protected by wells. Here also the possible evils of a fixed annual assessment were very apparent from the very bad state of a number of villages, which had, for some years, ceased to get any sailáb, owing to a change which had occurred after the first regular settlement in the course of the river and the direction of the floods. Large blocks of land in these villages had consequently fallen out of cultivation, even the wells in them being abandoned; and the revenue was being collected with the greatest difficulty.

4. Again, in the inland parts of tahsíls Dípalpur and Pákpattan, to which the sailáb did not penetrate, and where the soil is stiff and requires a good deal of water, rain cultivation was only attempted in a few low places to which the rain water drained, and then only in years of good rainfall. The cultivation in this tract was therefore, almost entirely dependent upon wells, or wells and inundation canals; and in places not reached by inundation canals, it was very poor and scanty. And the flow of water in the canals varied greatly from year to year, both in time and amount of supply.

5. A part of the canal-irrigated lands had already had an assessment which was to a small degree fluctuating. All the rest of the country described in the last three paragraphs had had a fixed assessment. The new assessments had been already worked out for all this country, and had been announced for tahsíl Dípalpur, but not put in force pending consideration of a suggestion made by Mr. Egerton, the Financial Commissioner (on Mr. Purser's reports), for making the assessment of the canal-irrigated lands more thoroughly fluctuating in their character. This suggestion was taken up and carried out by Mr. Purser and myself. For the rest of the country, not canal-irrigated, the new assessments were proposed in the assessment reports, and sanctioned on the old fixed system. But as I found that in respect to the high lands of Muktsar and the sailába lands of the Sutlej, the same view of the danger of fixity, which an inspection of the country suggested to my mind, had also occurred to Mr. Purser, I encouraged him to propose some kind of change in the system of working the new assessments of these tracts, whereby the annual demand would be made to correspond in some degree to the outturn.* These proposals we submitted in our reports of the announcement of the new assessments of tahsíl Muktsar of the river circles of the other tahsíls. For Muktsar we proposed what may be called assessment by the cycle instead of by the year. The plan is fully described in the extracts from our reports given in Mr. Channing's memorandum, and the plan which Mr. Ibbetson suggests in paragraphs 3, 4, and 5 of his memorandum is substantially the same. I may mention that the lambardárs of Muktasar, to whom Mr. Purser explained the system, declared that they were willing to accept it.

For the sailába lands of the river circles, we proposed annual assessments of the acreage under cultivation at rates fixed for term of settlement. The cyclical system proposed for Muktsar was not thought necessary by the Financial Commissioner or by the Government, and the old system of a fixed annual demand was maintained. As the new assessment, though a great increase on the old, is light, and as the zemíndárs of Muktsar are, as a class, men of remarkable energy and frugality, who not only save to some extent, but also take at once to other means of earning money when their crops fail them, I admit that the necessity of a change of system was not proved in this instance.

The annual assessment of sailába land on the Sutlej was so far approved that power to introduce the system within five years was reserved, but as the District Officer was opposed to its introduction, and no immediate necessity arose, that power was not exercised. No injury has resulted, as no great changes have since occurred in the character of the sailába on the Sutlej, except in the direction of increase. But the fixed assessment of many sailába villages on the Ravi, in Montgomery, have since broken down. The Ravi tahsíls of Montgomery had been assessed on the fixed system before January 1872. Some 50 sailába villages of these tahsíls have lately applied to have their fixed assessments cancelled, and fluctuating assessments substituted. The advisability of agreeing to this request is under consideration.

6. After Muktasar and Montgomery, I had to deal with the first regular settlement of Dera Ghází Khan. The rainfall of this district is exceedingly small; it is divided, broadly speaking, into three parallel strips or belts running between the Indus and the Suleiman range of mountains, *viz.* :—

(1) The river-side belt, in which the cultivation depends upon the Indus sailába, and is in part protected by wells.

(2) The intermediate belt, in which cultivation depends upon the inundation canals, and is in part protected by wells.

(3) The submontane belt, where the cultivation (called "rod kohi") depends upon the mountain torrents, which come down in flood after storm in the mountains, and whose water is spread over the country by dams in the torrent beds, and then caught and held up by high embankments round the fields. Fields once well soaked in

* NOTE.—Somewhat similar proposals were made for the sailába lands of Montgomery at the first regular Settlement by Mr. Vans Agnew, Assistant Settlement Officer, and were supported by Mr. (now Sir Henry) Davies, the Settlement Officer, but were rejected by the Financial Commissioner and Government of the day, as opposed to the policy of Government and the nature of our revenue system.

this way are secure of a crop, though if no rain falls between sowing and ripening, it will be a poor one. All the cultivation of this district is precarious, and more or less unsuited to fixed assessments The rod kohi cultivation is especially so. I raised the question of fluctuating assessments for this district, but fixed assessments had hitherto prevailed, and all the leading men of the country were opposed to a change. Major Sandeman, the Deputy Commissioner, and Mr. Fryer, the Settlement Officer, also argued against it, mainly on political grounds, and because of the difficulty of working fluctuating assessments on the extensive scale that would have been necessary. On the whole, I agreed with them for the same reasons, and because the new assessments we were imposing were very light ones. We therefore proposed fixed assessments which were sanctioned by the Officiating Financial Commissioner and by the Government.

7. After Dera Gházi Khan came the first regular settlements of the districts of Bannu and Dera Ismail Khan. In Bannu we found that a rough unrecognised system of annual assessments of sailába cultivation had been in force for some ten years in the khadir of the Indus: it had been forced upon the District Officers by the circumstances of the country. In the rest of Bannu and in the whole of Dera Ismail Khan, fixed assessments prevailed; but in a large part of the Dámán or "rod kohi" tract of Dera Ismail Khan, on account of the great uncertainty of the crops, the engagements for the fixed assessments were taken up, not by the proprietors jointly, but by some one or two leading men who could be induced to engage. These contractors, who were called mashakkasadars, and were also recognized as lambardárs, collected in kind from the other landholders, taking from them the "mahsúl," or share of the produce taken as revenue by former native governments. And in one part of this Dámán country (the Gandapur Iláqua) even this system of lambardár lessees had broken down, and Government collected the revenue direct in cash from the actual cultivators by valuing for each harvest, at the threshing floors, the mahsúl or Government share of the produce. For the very extensive khadir lands of both these districts we introduced, with sanction of Government, a system of fluctuating assessment at fixed rates of the sailába cultivation, as ascertained by an annual girdawári, or inspection; and in Dera Ismail Khan we introduced a plan of partly fixed and partly fluctuating assessment of the rod kohi cultivation of a large and most important part of the Dámán: this plan involved crop rates and returns of cultivation obtained separately for each harvest.

Mr. Thorburn, the Settlement Officer of Bannu, also proposed to adopt the cyclical plan of assessment for the Marwat tahsíl of that district. Marwat is a sandy country something like Muktsar, in which the cultivation depends entirely on a small and rather precarious rainfall. I, to some extent, favoured the suggestion at first, but in the end I did not support it, as the people, who are Patháns, did not like the idea, and the assessment we were giving them was a lenient one. The Government took the same view, and the proposal was negatived. Mr. Tucker, the Settlement Officer of Dera Ismail Khan, also proposed a kind of fluctuating assessment of the cultivation by wells in the thal lands of tahsíl Leiah and Bhakkar. This thal is the central part of the Sindh Sagar Doab, and is very nearly a desert; there is no cultivation worth notice, except round the wells, and in years of drought many wells are temporarily abandoned. By Mr. Tucker's plan, the assessment of wells temporarily abandoned was to be temporarily remitted; and on the other hand, new wells or old wells restored were to be assessed when brought into use. This proposal was not thought necessary, and was negatived by Government.

8. Next to the Bannu and Dera Ismail Khan settlements came the first regular settlement of Muzaffargarh, and the revision of settlement of Mooltan. In both these districts the average annual rainfall is exceedingly small, ranging usually between 3 and 7 inches. The cultivation depends upon sailáb or river floods, wells and inundation canals. In both districts we introduced, with sanction of Government, a fluctuating assessment of sailába lands, similar to that applied to the Indus Khadirs of Dera Ismail Khan and Bannu.

I may mention that in some of the summary settlements, which preceded the regular settlement of Mooltan, fluctuating assessments of sailába lands had been adopted as of necessity, but at the regular settlement of 1856-57, the system was condemned as unnecessary by Mr. Morris, the Settlement Officer, and abandoned.

In both districts, also, the question was raised and much debated whether the canal-irrigated lands, which had hitherto had a fixed assessment, should have a fluctuating assessment similar to that adopted for the canal-irrigated lands of Dipálpur and Pákpattan, in Montgomery. It was eventually decided that the system of fixed assessments should be maintained, but with certain modifications, which would facilitate remissions in case of temporary failure of the canals, and which would allow of a rate being imposed on new irrigation.

9. After Mooltan and Muzaffargarh came the revision of settlement of Jhang. The rainfall of this district is considerably heavier than that of Mooltan, but is still small and uncertain. The cultivation depends mainly upon the floods from the Jhelum and Chenab Rivers, and upon wells. There is very little simple rain cultivation, but the wells in the north of the district are much assisted by the rain. In this district it has been decided that the river floods vary little in extent and direction, and that fluctuating assessments of sailába land are not necessary. But in certain very dry and barren tracts in the south of the district, where the wells are often temporarily thrown out of cultivation in years of drought, the Settlement Officer has recommended a system of fluctuating assessment of wells very like that proposed by Mr. Tucker for the Dera Ismail Khan Thal.

10. In 1878 and 1879 a revision of settlement of 68 villages of the Gúrdáspur district was effected by the Deputy Commissioner, under my supervision as Settlement Commissioner. A large jhíl or marsh runs through these estates, and the cultivation of land in or near this marsh varies greatly with the character of the seasons. In assessing these villages we separately demarcated the marshy lands and gave them a fluctuating assessment to be levied by fixed crop rates on the annual returns of area of cultivation. It has since been found necessary to apply the same system to some other villages of this district, also containing marshy lands, which were found to be unable to pay their revenue. A similar system of assessment was applied to the marsh lands of some estates in Gurgáon during the recent revision of settlement of that district effected by Mr. Channing.

11. It will be seen from the above summary that in the Mooltan and Deraját Divisions, the advisability of adapting the revenue demand to the variation of the seasons has been already fully considered, and fluctuating assessments introduced where that course seemed necessary: whether the experiment will succeed in these divisions will depend mainly upon the care and intelligence of the District Officers. It would be premature as yet to say that success is certain.

The districts of the Pesháwar and Ráwalpindi Divisions are lightly assessed, and have tolerably heavy and regular rainfalls, so I think it may be assumed that they do not require any measures of the kind.

The same may be said of the Amritsar, Jullundur and Lahore Divisions; if the Muktsar tahsíl, which is at the extreme south of this country, and is most dependent on rain, and has the worst rainfall, can bear a fixed assessment, there is no tract in these three Divisions which can require a fluctuating one. Marsh lands which suffer in wet seasons should, by-the-bye, be excepted, but their area is insignificant, and they only require fluctuating assessment in exceptional cases.

In the Umballa and Delhi Divisions, also, the rainfall is generally heavy and regular, but there are a few tracts in Umballa, Karnál and Gurgáon, which are almost entirely dependent upon rain, and which suffer very severely in years of drought, and this is true of almost the whole of the Hissár Division, which also has a much smaller and less regular rainfall.

12. I think, therefore, the questions to be answered are—(*a*) whether variable assessments are necessary for parts of the Umballa, Delhi and Hissár Divisions; (*b*) if so, whether the system suggested in the last paragraph of the letter of Government of India to Government of Bombay, is suitable; (*c*) if not, what other system is to be recommended.

13. As to question (*a*), it will be seen from the letters appended, from Major Wace, Mr. Purser, and Mr. Ibbetson, and from Mr. Channing's memorandum, in which Mr. Fanshawe's opinion is also quoted, that all these officers are agreed that the present degree of fixity of demand is injurious on these localities, and requires relaxation. Most of them are in favour of some system of variable or fluctuating assessment. The others appear to see great difficulties in the way of any change of system, and only recommend much greater liberality in suspensions and remissions, and the charge of interest on suspended balances. My own opinion is, that in many parts of the Hissár Division, and, perhaps, in the Kaithal tahsíl of Umballa, the Nardak tract in Karnál, and parts of Gurgáon, some system of variable assessment would be beneficial, and ought to be tried whenever an opportunity offers.

14. As to question (*b*), which concerns the suitability of the system suggested in the letter of the Government of India, if Mr. Steedman describes that system fairly in paragraphs 2 and 3 of his letter, then I agree with him in thinking it would be not only difficult of management, but also injurious to Government. Perhaps the reply to his objections would be that the "normal assessment" of the Government of India letter would be, not as he puts it, "a fair estimate in cash of the Government share of the produce for the period over which the assessment is to run, good years and bad ones being taken together," but rather such an estimate, really bad years excluded. In other words, that the "normal assessment" out of which percentage remissions would be made, would be a higher one than the fixed assessment for terms of years imposed under the present revenue system. This would meet the objection of loss of revenue to Government, but it would be difficult to get the zemíndárs to engage at announcement of such assessments, or they would not believe sufficiently in the promised remissions. And supposing that the Settlement Officer makes his own calculations with proper accuracy, how is he to make all the Collectors who will have the working of the settlement, sufficiently understand what he understood by a really bad harvest, for which remissions should be allowed: too much would be therefore left to the discretion of the Collector, with the result that the amount of remission given would vary greatly in different districts according to the disposition of the Collector; it would be difficult for the supervising Revenue authorities to check these divergencies, as the work would depend so much upon minute local knowledge. If they interfered much they would discourage remissions, and the zemíndárs' fears would be realized. I understand that it is one principle of the system suggested in the Government of India letter that the remissions would be made, not in detail for individual villages, but in a broad way for districts, or large tracts within districts. No doubt if this principle was not adhered to, and the villages were treated in detail, it is to be expected that in indifferent years there would be a gambling for remissions, which would demoralize the zemíndárs as revenue payers, and give another opening for corruption of the subordinate revenue official. On the other hand, unless the remissions are to be confined to extraordinary years of severe widespread drought, there must, I think, be very few tracts which could be properly treated so very broadly. I understand, of course, that the system is only intended to be applied to exceptional tracts, but what I mean is, that I think such a strict condition of uniformity of treatment would prevent its being worked freely and intelligently For the above reasons, I am of opinion that the system suggested, if I understand it rightly, is not suitable.

15. As to question (*c*), the system to be recommended. I think it clear that the systems of fluctuating assessments which have been lately introduced for sailába and rod kohi lands in some part of the south of the Punjab, would not do for the tracts now under reference. The reason why, is well explained in the 7th paragraph of Mr. Ibbetson's memorandum. Moreover, these systems necessitate annual or biennial returns of cultivation obtained by more or less troublesome and annoying field-to-field inspections, which should most certainly be avoided, if

possible. It did not seem possible to avoid them in the case of the sailába or rod kohi lands, as the floods from these rivers or hill torrents may, and often do, change their direction and move away more or less completely for years at a time from villages they have been benefiting; but the case of variations in the rainfall is different. My conclusion is, that for the tracts under reference the system of cyclical assessments is, as Mr. Ibbetson says, the most hopeful and practical proposal. It is a system of fixed assessment, and retains the good part of that system, while avoiding some of its practical disadvantages. It retains the power of fixing the demand for term of settlement in the hands of those best qualified to exercise it; that is, in the hands of the Settlement Officers working under the supervision of the Financial Commissioner and the Local Government. With reference to Mr. Purser's remarks, I may explain that I would not use the system to impose a materially higher assessment than we are now imposing: I would use it only to facilitate the collections, and to make unnecessary the remissions which we are now occasionally forced to allow, and which, if we do not change our system, we shall perhaps have to allow oftener in future. Used in this way to collect a really moderate assessment, I think the difficulties of working the system would be found not nearly so formidable as Mr. Purser seems to apprehend. As Mr. Steedman says in paragraph 6 of his letter, the zemíndárs generally allow that if there is anything of a crop the demand can be paid with ease. In most years, therefore, it would be easy for most villages to pay up in advance (by way of an insurance rate to secure remission in probable years of drought) something more than the rateable share for one year of the demand for the cycle. I would put the cycle at ten years, and as Mr. Ibbetson suggests, I would never (except, perhaps, in the case of successive seasons of extraordinary drought) remit any balance remaining at the end of the cycle, but, if necessary, I would suspend and carry it on to the account of the next cycle: such necessity would be considered to indicate bad management by the Deputy Commissioner, if the cycle had not been an extraordinarily bad one. The excess demand levied in good years would be announced, for convenience of calculation by the zemíndárs, at so many annas in the rupee above the average demand, and less collections would have the same form. I do not think that the system could only be introduced at time of settlement: with consent or by legislation it could be introduced at any time. Whether interest should be allowed on payments in advance and charged on payments in arrears, as proposed by Mr. Purser, is a question of detail upon which I am hardly ready to give an opinion.

16. Mr Channing, in his memorandum, decides on the ground of difficulties of working against the cyclical assessment plan, and advocates instead a free and ready use in years of drought of the present power of suspensions, qualified, however, by the charge of 12 per cent. interest on suspended balances. He also quotes from Mr. Fanshawe's and Colonel Davies' reports on the assessment of Rohtak, in proof of the future necessity of ready suspensions in that district, and of the advisability of the charge of interest on balances. But Mr. Fanshawe and Colonel Davies wrote on the assumption that the present system was to remain unchanged: they gave no opinion for or against the plan of cyclical assessments which was not before them. As I said in April 1874, the novelty in the latter plan really amounts to little more than this, that it gives the Deputy Commissioner and Commissioner, who at present only have power to suspend, power also to collect in advance. With regard to the character of the population we have to deal with, I am strongly of opinion that without such power of collecting in advance, the policy of greater liberality in suspensions, advocated by Mr Channing, would be a very dangerous one. Suspension is only a small mitigation to the zemíndárs' of the effect of a drought, and those effects are felt in subsequent years: a bad drought leaves the people in a weak condition, and the burden of balances may just overweight them. I do not think the charge of 12 per cent. interest would have the effect of making the people prudent in taking suspensions and prompt in paying off balances; and the popular feeling would be that the Government was acting like a usurer in exacting interest on balances due to calamity of season.

What the people ought to do of their own accord in these tracts is to save something in advance against years of drought, not to wait for such years and recover from the effects as they best can by subsequent stintings. The plan of cyclical assessment properly worked will force them to do what they ought to do: the plan of liberal suspensions with or without interest will encourage them in the contrary course.

17. If the system is to be tried in the Nardak tract of Karnál, or in parts of Rohtak or Gurgáon, permission should be accorded without delay, as the settlements of those districts are now almost completed. In fact, in a few days' time there will be no settlement establishments left in Gurgáon.

No. 1071, dated Jullundur, 5th May 1879.

From—D. G. Barkley, Esq., M.A., Additional Commissioner, Umballa and Jullundur Divisions,
To—The Secretary to Government, Punjab.

No special machinery for disposing of suits to which agriculturists are parties in the Punjab recommended.

In reply to your No. 1214, dated 2nd ultimo, I have the honor to state that, in my opinion, no advantage would be likely to result in this Province from the constitution of special courts to dispose of suits to which agriculturists are parties. Such suits form much the greater part of the civil litigation in this Province, and if the existing courts are not competent to dispose of them on the whole satisfactorily, they are not likely to be more fit to dispose of the cases which would remain after these were withdrawn.

The proposal to confer summary powers upon selected Civil Judges in this class of suits not advocated;

2. The proposal to confer summary powers upon selected Civil Judges would not, if acted upon, make our Courts better adapted to this class of cases. There is no magic in summary powers which will ensure cases being more patiently investigated, or decided in a more equitable manner, and the Judges who might be selected would be few in number, and could only give up a limited portion of their time to the trial of such cases, so that the proportion which could be disposed of by them would be exceedingly small. The privilege of appeal, also, is greatly valued, and certainly not less so by the debtor than by the creditor, and though in the case of petty claims it is not very largely exercised, it does not follow that the parties would be satisfied that justice would be done if it did not exist. If it is withdrawn, it should be on account of the superior qualifications of the presiding officer rendering it unnecessary, rather than from any idea of improving the working of the courts. As regards the benefit to the Judge of having some experience in the disposal of original cases, our appellate courts are all presided over by officers who have had such experience, and the Judicial Assistants, in particular, have ordinarily to take a share in the original civil work of their districts, usually trying the most difficult and important cases.

Nor any great increase in the number of the courts.

3. On the other hand, I do not think that any great increase in the number of our Courts is likely to be beneficial. We have now one or more Civil Courts at the head-quarters of each tahsíl or revenue sub-division of a district, and jágírdárs and other gentlemen able to give up a portion of their time to such duties acting as Honorary Civil Judges in the localities where they reside.

Grant of civil jurisdiction to village headmen not advisable in ordinary cases.

4. Except in thinly peopled tracts of country where there is naturally but little litigation, the courts are therefore at no unreasonable distance even from petty litigants. The proposal to give jurisdiction to village headmen to pass decrees up to Rs. 10 or Rs. 20 is one which I do not think likely to work well. In many cases, no doubt such decrees would be passed by consent, the creditors perhaps making it one of the conditions on which he granted a loan that the debtor should consent to a decree, as a sort of security for the recovery of the money, and in others the money would be justly due; but it is to be remembered that the village headmen are often themselves in debt, and if their creditors owed a grudge to any one, and in order to harass him, got their dependents and relations to sue him for small sums, the village headmen might find it difficult to act with independence, and even if they did so, would be liable to be accused of partiality. There being no record of evidence, and no appeal, it

could not be satisfactorily determined whether such an accusation was true or false. In the cases where decrees would be given by consent, money would be included which would not have been brought into Court but a bond taken instead, but for the existence of these special tribunals.

5. But I think that our existing Courts might, with great advantage, be empowered, where the parties were willing to agree to this course, to refer to village headmen or others of local knowledge and influence, cases of debt, breach of betrothal contract, and others in which the facts in dispute were likely to be better sifted, and the actual merits of the claim arrived at by such persons than by the Court, hearing evidence at a distance from the spot, and having no adequate means of testing its truth and completeness. The awards of such referees should not, like those of arbitrators, be final. The Court should be left to judge whether the object of the reference had been gained, and if it was not satisfied on this point, to decide upon evidence taken in Court. The referees would then be more likely to do their duty honestly, and would often escape groundless accusations of corruption or misconduct, as the parties dissatisfied could ask the Court to inquire into the facts for itself, and would generally try to show that the inquiry was incomplete or unsatisfactory on other grounds.

Arbitration why so little resorted to.

6. Under the present law, arbitrators are rarely appointed, because their awards will be final, unless set aside by the Court on the ground of corruption or misconduct; and when arbitration has been resorted to, the party dissatisfied with the result often asks to have the award set aside on the ground of corruption or misconduct, though utterly unable to support such a charge.

Otherwise before introduction of Civil Procedure Code into the Punjab in 1866.

7. Before 1866, when the Civil Procedure Code was first introduced into the Punjab, arbitration was much more freely resorted to, and I believe 9 or 10 per cent. of the decided cases, which would probably represent 20 to 25 per cent. of contested cases, were referred to arbitration. The great reason of this was that the Courts were empowered to set aside the award, if they saw reason to doubt the fairness of the result, and a dissatisfied party did not lose the right of appeal. The system worked satisfactorily, and only in about one per cent. of the cases were awards set aside, while in very many cases the arbitrators secured the concurrence of the parties before presenting an award, or brought about a compromise, which was filed by the parties themselves.

What is proposed, a partial return to the former system.

8. Such a system was well adapted *to debt cases*, when payments were alleged but disputed, or where interest had been added at high rates in balancing accounts from time to time; and what I propose would be in great measure a return to it, though I do not think it desirable to give the Courts the power, which they formerly possessed in the Punjab, of referring cases without the consent of the parties.

Irregular issue of commissions for local inquiry intended as a substitute for arbitration.

9. At the present time some Courts try to find a substitute for such a system by issuing a commission for local inquiry to two or three persons in cases which appear to them doubtful after hearing the evidence produced by the parties, their chief object in doing so being to get the opinion of the persons to whom the commission is issued upon the case, and these persons are accordingly selected with little regard to their ability to examine witnesses satisfactorily, and make a clear record of their evidence. This system is of course entirely irregular, but where courts are very much in the habit of issuing commissions for local inquiry, especially in cases of debt, this is generally done more for the purpose of getting the opinion of some one, in whom the presiding officer has confidence upon the case, than because it appears really necessary that evidence should be taken on the spot.

Advantages of the system proposed in the Punjab.

10. A system such as I propose would be well understood, from its similarity to one previously in force, and would be satisfactory to the people, as it would secure the services of the men whose local knowledge and influence would be of use in ascertain-

ing the facts of cases, the parties to which belonged to their neighbourhood, not merely in petty cases, but often in cases in which large sums were sued for, while these men would neither give final decisions nor decisions subject to appeal, as proposed in the article from the *Akhbár-i-Anjuman-i-Punjab*, but awards which would require the confirmation of the Court by which these cases had been referred to them.

Petty local Courts might be useful in particular localities, but where most needed, there would often be difficulty in constituting such Courts.

11. There may be localities in which a petty tribunal could be established with advantage for some of the purposes suggested in the article referred to, but while these would not be required where the ordinary Courts are near, it would often be found that men who could make a satisfactory record of the proceedings could not be found where those Courts are distant, and unless the members of such Courts were men who would now be regarded as eligible for the appointment of Honorary Magistrate, I do not think they could, with advantage to the people, be entrusted with the trial of small debt cases or suits for damages to property.

Suitors should not be allowed to select the Courts; Punjab Courts Act enables Deputy Commissioner to transfer cases when this is desirable.

12. You inquire whether suitors should be allowed the option of carrying their cases before Courts of higher original jurisdiction in preference to local Courts competent to try them. I would answer this in the negative. If such an option were given, the choice would necessarily rest with the plaintiff, who might summon the defendant before a more distant Court of higher jurisdiction merely to harass him and oblige him to submit to his demands. If any good reason exists for a transfer, an application can be made by either party to the Deputy Commissioner, who, in the Punjab, has the power of transferring a case to a Court of higher original jurisdiction.

A fluctuating assessment of land revenue desirable in certain tracts.

13. With reference to the inquiry whether there are any tracts in this province where a fluctuating assessment might advantageously be introduced with reference to the scanty and uncertain rainfall, I am of opinion that there are such tracts. I have not the local knowledge which would enable me to enumerate all, but I would instance the Sirsa district, and probably the Muktsar tahsíl of Ferozepore, as belonging to this class. The latter has recently been resettled, and the Settlement Officer recommended that "in bad years suspensions should be liberally granted," adding that "in good years balances are paid up without difficulty."—*Paragraph* 46 *of Mr. Purser's Report.*

Uncertainty as to suspensions being freely granted in such tracts when required.

14. This would, no doubt, be all that is necessary, if, in cases of this nature, suspensions were always freely granted when required. There is, however, considerable risk of this not being done. Tahsíldárs and Deputy Commissioners are not always ready to recommend such measures, as a certain amount of trouble must be taken before sanction can be obtained, and as it is generally looked upon as a sign of bad revenue administration if any large amount of revenue remains in arrear; nor are superior authorities always disposed to grant suspensions when recommended. It may be thought that a suspension should not be required, or the financial exigencies of the State may be such that it is thought inconvenient to grant suspensions if the revenue can possibly be collected. The revenue can be collected so long as the proprietors have credit to borrow it, but if, in consequence of its being collected, they are obliged to borrow the money at say 24 per cent. interest, and perhaps to renew the loan, their ability to meet future demands must be seriously affected. A Deputy Commissioner may see that the revenue cannot be paid in a particular season except by borrowing, and may recommend suspensions; but if told that, the assessment being a light one, the proprietors should be able to meet the demand in bad years as well as good, three Deputy Commissioners out of four would consider it useless to press their recommendations or to send on any further recommendations they might have intended making, unless in the most extreme cases. According to leading articles in the *Pioneer*, even the Lieutenant-Governor of the North-Western Provinces has been led to discourage suspensions, after reporting that they would be necessary on a large scale, by being told that it would inconvenience the Government of India in the Financial Department if such suspensions were granted.

15. It has sometimes been proposed to make the assessment, not for a single year, but for cycles of years, in tracts where the harvests are very uncertain. But unless the cycle adopted is very long, there can be no certainty that it will include an average number of good seasons and an average number of bad. It would thus probably be impossible to ensure that the revenue would be fully collected within the cycle which might be adopted.

Assessment fixed for a cycle of years, but not from year to year, not advocated.

16. What I would suggest, therefore, would be something of the following nature. Suppose that it is estimated that in 12 years the crops of 2 years are excellent, the crops of 3 years fair, the crops of 5 years poor, and the crops of 2 years bad; that, 16 annas being taken to represent, a bumper crop, crops exceeding 12 annas are considered excellent, crops of from 8 to 12 annas fair, crops of 4 annas and under 8 annas poor, and crops under 4 annas bad: the average crop will thus be one somewhat below 8 annas. Then instead of calculating the assessment upon an average crop, calculate it upon the value of a 10-anna crop and let the full assessment be taken whenever there is a crop of 8 annas or more. If the crop is 6 annas and under 8 annas, reduce it by 20 per cent.; if it is 4 annas and under 6 annas by 50 per cent.; if 2 annas and under 4 annas by 80 per cent.; and if under 2 annas, collect nothing. If a crop of 12 annas or more follows a year when a reduction of 50 per cent. or more was given, collect, in addition to the current demand, half the sum reduced from the previous year's demand, but, except in such cases, let the sums reduced be regarded as entirely remitted.

System of fluctuating assessment proposed.

17. The result may be tested as follows:—

The produce of the two excellent years may be taken at 28 annas, that of the three fair years at 30 annas, that of the five poor years—two at 14 annas and three at 15 annas, and that of the two bad years—one at 3 annas and one at 1 anna. The total is 91 annas, or an average of a little more than 7½ annas per annum. If, then, the assessment calculated upon 10 annas produce be Rs. 100, a fixed assessment for the entire period would be about Rs. 76 per annum, or Rs. 910 in all, subject, however, to the risk of having to make absolute remissions at least in the bad years. The fluctuating assessment would be—

Attempt to calculate the result of this system.

5 years at	... ...	Rs. 100=	Rs. 500
2 years at	... ...	Rs. 80=	Rs. 160
3 years at	... ...	Rs. 50=	Rs. 150
1 year at	... ...	Rs. 20=	Rs. 20
1 year	... ...		*Nil.*
	or a total of	...	... 830

If one of the two excellent years succeeds one of the years in which a reduction of 50 per cent. or more has been given, this total will be increased, and the true average for the twelve years will be about Rs. 72 per annum.

18. But unless the Settlement Officer calculated that suspensions would be freely given when required, he would not think it safe to assess so high as Rs. 76 per annum, for he will feel that in five years out of the twelve this sum could not be paid out of the current income, and as two of these years may come in immediate succession, the result of a demand of that amount, strictly enforced, might be ruinous.

Full assessments not likely to be demanded in any tracts, if a fixed assessment is proposed.

19. It may be that officers with more experience of the arid tracts than I possess will be able to suggest a better plan of fluctuating assessment. What I have proposed above is merely a suggestion as to how such assessments might be managed. I have only to add that it would probably be impracticable to estimate the produce of each village from year to year, and the estimate would therefore have to be based on the crops of a circle of villages, the circumstances of which are likely to vary in a similar manner from year to year.

Not proposed to estimate produce of each village from year to year.

20. It is of course for the arid tracts only that I would suggest any such system as desirable. The alternatives are, either to collect a share of the produce in kind or its value by a system of appraisement which would demand large establishments, and would open a wide door to fraud, owing to our officers having no experience in making collections on such a system, or to grant suspensions freely, when required, taking care that the assessment is moderate to begin with; but if this course is preferred, great care would be necessary to secure that all cases in which suspensions ought to be given receive due attention, and that the suspended demand be only enforced when the people can pay it without undue pressure.

What alternatives to a fluctuating assessment in the arid tracts are practicable.

No. 210, dated Rohtak, 29th May 1879.

From—W. E. PURSER, Esquire, Settlement Officer, Rohtak,

To—The Settlement Secretary to Financial Commissioner, Punjab.

I HAVE the honor to reply to your letter No. 2964 S., dated 22nd ultimo, asking for an expression of my opinion as to the desirability of introducing a system of variable assessments.

Reply to his letter.

2. I have for a long time held the opinion that a much larger revenue could be raised without causing any pressure on the people by a well-worked system of collecting more or less of the revenue according to the character of the harvest. I proposed this system as regards the Muktsar tahsíl of the Ferozepore district; also for the sailába lands of the Montgomery district; and succeeded in getting it adopted for the canal lands of the same district. I am satisfied it would be most beneficial in Rohtak; and, in fact, from a perusal of assessment reports, have come to the conclusion that there are very few parts of the country where it would not be so.

Approves of system.

3. At the same time, it is hard to see how it could be worked. Of course the system would be that the revenue would be fixed for a certain term, though the portion to be realized each year of that term might vary. Thus a village would be assessed at Rs. 20,000 for 20 years, but more or less than Rs. 1,000 would be realized each year according to the goodness or badness of the season. Interest at, say, 6 per cent. would be taken on any sums in arrears and allowed on any sums collected in advance. Thus, if in the first year Rs. 2,000 were realized instead of Rs. 1,000, the village would be allowed Rs. 60 in its accounts the next year. If only Rs. 500 were realized, Rs. 30 would be payable in addition to Rs. 1,000, due the second year. But, then, who is to decide the character of the season, and the amount of variation that should be made from the normal demand?

Main features of the system.

4. It is by no means easy to say what the character of the harvest is. Thus this year the area under rabi crops in Rohtak is much below the average, and the báráni crops are very poor; but the yield of the well crops has been far better than was expected before they had been threshed out. Then, up to the last moment uncertainty hangs over the fate of the crops; but in order simply to get over the ground, the person inspecting them must be out before the last moment. Again, how few have local knowledge enough to say what the average outturn ought to be, or to say whether the crops are below or above the average. And sometimes an apparently very bad season may really not be so injurious as another seemingly better. Thus, in a semi-pastoral tract though the crops may be poor there may be abundant grass for the cattle, and so the people may not be badly off in spite of the bad harvest.

Difficulty in deciding character of season.

5. In fact a good deal of time and local knowledge are needed except in extreme cases to decide what sort of season it is. These the Deputy Commissioner rarely has, and it is not work that ought to be left to subordinates. As soon as it is known that a village has a right to relief in case the harvest is bad, it is to be feared that bad harvests will become very frequent, and that constant attempts will be made to impose on the Deputy Commissioner. Altogether, I think there are very few Deputy Commissioners who would care to have the working of the system.

Continued.

6. A question too arises,—who is to decide the amount to be realized each year? If the Financial Commissioner, orders will come too late to afford relief, unless the Deputy Commissioner is allowed to suspend on his own responsibility. If the Deputy Commissioner, there will be no uniformity, and one district will get relief while the next, though far worse off, will get none. And Deputy Commissioners will be very apt in seasons of even moderate pressure to put off collections, trusting that something might turn up before the next year came round.

Who is to decide what sort of a season it is?

7. On the whole, I think the idea of the system a very good one, but that its practical working is full of difficulties. Of course I can give no opinion as to how the financial system of the country as a whole would be affected by the enormous fluctuations to which the land revenue would be exposed.

Summary of opinion.

P.S.—June 9th. This letter was written more than a fortnight ago, but the fair copy being sent for signature to me at Umballa, arrived there after I had left and has reached me only to-day.—W. E. P.

No. 90, dated Jhang, 9th July 1879.

From—E. B. Steedman, Esquire, Settlement Officer, Jhang,

To—The Settlement Secretary to Financial Commissioner, Punjab.

In reply to your No. 2965 S., of the 22nd April, I have the honor to submit the following expression of my views on the subject therein alluded to.

2. The question under discussion is in the words of the Government of India letter:—"Is a varying scale of revenue demand to be applied in unfavourable seasons, whereby the nominal assessment might be *reduced by a certain percentage* over an entire district or division of a district in the event of a failure of rain or other cause of serious damage to the crops, desirable?" In other words, is it expedient to remit by percentage portions of an assessment, that assessment being a maximum for the term of settlement in years of bad harvests? The word used throughout is "remission," not "suspension."

3. I see many objections to such a system of variation in the revenue demand. I hold that in the case of rain-lands and others where harvests are uncertain, the only true way, fair to Government and the people, of varying the Government demand in accordance with the seasons, is by annual or harvest measurements of the land under crop and assessing that area only. A proposal to grant reductions of revenue by percentages in bad seasons appears to me to be unnecessary and fraught with difficulties. Such a system would, if introduced, be no doubt most pleasing to the ryot, but is it just or equitable to the Government? I assume that our assessments are, or ought to be, a fair estimate in cash of the Government share of the produce for the period over which the assessment is to run, good years and bad ones being taken together. If this hypothesis is correct, then if Government grants remissions in years of bad harvests it should in all fairness be empowered to recoup those losses in years of plenty. As I understand the Government of India letter, this is just what the Government would be debarred from doing. A "suspension" would allow a recoupment, but not a "remission." To grant reductions in years of bad crops on an assessment based on the average produce of a cycle of years is a game at which Government has everything to lose and nothing to gain. A variable demand such as is suggested varies only to the disadvantage of Government. Of course if the present assessments are heavy, or much too heavy, then the loss is so far lightened. The assessment is above a fair average and takes too much in average years. I do not know for what periods settlements run in the Bombay Presidency, or whether the profits on the extension of cultivation fall exclusively to the zamíndár or not. The Bombay assessments appear to be pitched at a very high rate. Want of information prevents me offering any opinion on the question as applied to the Bombay assessments. In the Punjab, I feel quite convinced, with our system of moderate assessments, a plan of this description would be disastrous. It would diminish the Government revenue and demoralize an already lazy population.

Perhaps the "normal assessment" of the Government of India letter would be an assessment in which no allowance would be made for years of drought or exceptionally bad rainfall.—J. B. L.

4. The improvident hand-to-mouth kind of life a zamíndár ordinarily leads is sufficiently well known. I do not believe for a moment that an entire remission of all land revenue would in any way better, except for a time, if that, the condition of nine-tenths of the zamíndárs, at least in the districts with which I am acquainted. It is a phenomenon of constant occurrence to find that fertile villages lightly assessed are heavily encumbered with mortgages and debt.

5. That a fixed cash assessment in tracts where the mass of cultivation depends for its crops on an uncertain fitful rainfall must and does press very heavily in bad years, there is not the slightest doubt. If the people saved in years of bumper harvests they would tide over bad years; but this is just what they do not do, and never have done. This surplus is sometimes spent extravagantly, but more often is swallowed up in money by the buniah. In the whole of the Jhang district I do not believe there are ten zamíndárs who ordinarily manage to hold up their stocks of grain in the hope of a rise in price for any time after harvest. If the buniah, standing in the position of a middleman, *always* paid the revenue and assisted his customer, the case would be somewhat altered; but this he does not do. In bad harvests, in years of drought or famine, the zamíndár's demand for a loan is met by a flat refusal His credit has vanished. The most disheartening piece of the business is that the debts of the zamíndár are composed almost entirely of interest and compound interest. Take any ordinary account between a zamíndár and his shah, and, the interest debits being excluded, it will be generally found that the zamíndár has delivered produce of more value than the articles and cash he has received. What I have written above shows that though it is necessary to lighten the Government demand in bad years, the Government should always as far as is expedient recover the remission in good years, as the surplus would not in any case go far to benefit the zamíndár.

6. As I have said above, our assesments are based upon a low estimate of the average value of the Government share of the produce for a term of years. This estimate is converted into a fixed annual cash demand. The Sikh system, I speak more especially of Sawán Mall's, was fluctuating and took a fixed share of the produce of each harvest. This was levied partly in cash and partly in kind. I am very strongly of opinion that a system of this description, if worked honestly and effectually, is far better adapted to all districts and tracts where harvests are more than usually precarious than our rigidly fixed cash assessment. I have been constantly told by zamíndárs of this district that if there is anything of a crop the Government demand can be paid with ease, but that failure of the crop or very light harvests ruin them. They save nothing. They borrow money to pay the revenue. In a year this has increased by 25 per cent. Then and another bad harvest perhaps, and the original loan increases by 60 per cent. The only way to avert the evil is to give at once liberal reductions;* but I would always, as far as possible, recover them in good years. There should be no delay in the reductions. † They should be granted before the instalments become due. This is what must be done where the assessment is fixed, and to do it will require far more attention to the collection of revenue than District Officers have hitherto given. To fix promptly for each village the remission ‡ that should be given, and to determine the times and amounts at which it should be recovered, it is necessary that the District Officer should be thoroughly acquainted with his district and that he should have highly efficient Tahsíldárs under him.

In great part of Jhang Sáwan Mal' used fixed cash rates per bigha of cultivation, not only for what were ordinarily zabti crops under Sikh rule, but also for corn and fodder crops. As a safe-guard the cultivator had the option of paying by batai, *i.e.*, division of produce, which of course he would prefer to do if the yield in any year was very small.
J. B. L.

* *i.e.*, remissions.
† *i.e.*, suspensions.
J. B. L.

‡ *i.e.*, suspension.
J. B. L.

7. To use a regularly fluctuating system of assessment with annual measurements seems infinitely superior to a nominally fixed assessment rendered variable by constant remissions, suspensions and recoveries, much more easily worked and fairer to the people. It must be borne in mind that the business is not over when the percentage of reduction has been determined for a given village. It has to be distributed over the holdings. Some holdings will be waste, some bearing an 8-anna and some a 16-anna crop. How will each revenue payer get a deduction from his revenue proportionate to the reduction sanctioned for the village as a whole? Or will that reduction be distributed

There will not often be such differences in villages in tracts where the cultivation is mainly or entirely dependent on the rainfall.
J. B. L.

over all the holdings in accordance with the good or bad condition of each holding? The latter course inevitably gives rise to much ill-feeling and endless bickerings; and if the former is chosen, then the distribution of the reduction will be unfair. With a system of annual measurements these difficulties are avoided. Each proprietor pays revenue for the amount of his land that is under crop. The rate of assessments is fixed and there is no *bach* or distribution. The only inequality will lie in the fact that some crops are better than others, and this pervades all assessments.

8. I have not in this letter gone at any length into the question whether fluctuating assessments are desirable or not for tracts where the harvests and rainfall are precarious. I take it for granted that such a system is generally desirable. Then comes the question, what is the extent of uncertainty that makes the introduction of the system necessary? This can only be satisfactorily answered for each district or tract by a person who is thoroughly acquainted with their circumstances. For instance, in the Punjab the sailába lands of Jhang have been assessed with a fixed, those of Mooltan and Muzaffargarh with a fluctuating assessment. My own opinion is that where full assessment is imposed a fluctuating system of collection must, except where the crops are fairly certain and the proprietors fairly thrifty, always be better suited to the people and, I think more profitable to Government. A fluctuating assessment should always be pitched high. The one fatal objection to fluctuating assessments is that their effectual collection requires a large body of honest subordinates, and these it is well nigh impossible to secure.

9. My principal object in this letter has been to show that the system of a variable fixed assessment as contemplated by the 16th paragraph of the Government of India letter is difficult of management and prejudicial to the interests of Government.

No. 235, dated Kasauli, 29th May 1879.

From—Major E. G. Wace, Settlement Commissioner, Punjab,

To—The Settlement Secretary to Financial Commissioner, Punjab.

Opinion on the question of introducing a system of variable assessments.

Secretary to Government of India, to the Secretary to Government of Bombay, No. 222, of 26th February 1879, para. 16.

Secretary to Government of India, to Secretary to Government, Punjab, No. 6-269, of 6th March 1879, para. 3.

I have the honor to reply to your No. 2963 S., dated 22nd April 1879, in which, with reference to the correspondence noted in the margin, you ask my opinion as to the desirability of introducing a system of land revenue assessments which shall vary with the character of the season.

Proposal relates only to districts in which the rainfall or other water-supply is uncertain.

2. I observe from the correspondence under reply that the Government does not desire to introduce this system in districts where, owing to the ordinarily regular character of the rainfall or other water-supply, the harvests are usually reliable. The proposal only relates to districts in which the rainfall or other water-supply is uncertain and the vicissitudes of season are consequently great.

Principle advocated by the Government of India has been applied of late years in assessment of land revenue in the Punjab.

3. In reply I have the honor to say that the records of the settlements recently made in the Punjab during the past 15 years which are available in your office, will show that the principle advocated by the Government of India has been carefully applied of late years in our assessment of the land revenue.

Fluctuating system of assessment of river lands obtaining in the Deraját and Mooltan Divisions noted.

4. In the Bannu, Dera Ismail Khan and Muzaffargarh districts, where the action of the River Indus on the alluvial lands in its bed and immediate vicinity is extremely capricious, the settlement recently made only fixes the rates payable by lands under cultivation; and the revenue demand area of the crops from these lands is assessed at those rates year by year according to the area of each year's crops. The same system has been applied to the alluvial lands of the Chenáb, Rávi and Sutlej rivers in the Mooltan and Muzaffargarh districts.

Similar system introduced in the Daman of Dera Ismail Khan district owing to the character of the irrigation.

5. Again, on the Dáman or sub-montane lands of the Dera Ismail Khan district, where the rainfall is almost nil and cultivation depends entirely on the torrents which, after falls of rain in the Sulimán mountain west of the district, are discharged by the natural drainage lines; the assessment varies with the area of each harvest according to rates fixed at settlement.

6. On the same principle the land revenue of the Mooltan Division, so far as it is contributed by canal irrigated land, varies with the success or failure of the canals. In the Montgomery district of this Division the demand of each year on these lands is assessed by measurement of the crops grown, and by applying to the crop area rates fixed at settlement. But in the Mooltan and Muzaffargarh districts the assessment fixed is such as can properly be paid in a year when the canals are fairly successful, as they usually are; and in bad years abatements can be claimed in proportion to the failure of the canals. The amount due to the canals and thus remissible in the event of their failure is recorded at settlement against each holding. In the two districts last named, land to which canal irrigation is newly applied subsequent to date of assessment is also charged a light rate of 8 annas per acre for each year of irrigation.

System on which the revenue of the canal irrigated lands Mooltan Division is assessed.

7. Similarly, on the Bári Doáb Canal, which irrigates large areas in the Amritsar and Lahore Divisions, all the land revenue which depends on irrigation supplied by this canal varies from year to year according to the area of irrigation; the area actually irrigated in each year being assessed at rates fixed at settlement.

System prevailing on lands watered by the Bári Doáb Canal.

The same principle is being applied on the Western Jumna Canal, which irrigates portions of the Delhi Division, the old settlements made more than 30 years ago being now under revision. It will also be applied to the lands of the Umballa Division, which will be irrigated by the Sirhind Canal which is approaching completion.

The same system now in course of extension to lands irrigated by Western Jumna Canal; and hereafter to Sirhind Canal.

8. Important changes of system, such as the substitution of a fluctuating for a fixed assessment, cannot be introduced without considerable circumspection. But owing to the operations of recent settlements, there is now probably no considerable tract in the Punjab (parts of the Hissár Division perhaps excepted), to which a fluctuating system of assessment is applicable, in which it has not been introduced or is not in course of introduction by settlement operations now approaching completion. The principles of our recent settlements in the Punjab contemplate and encourage the application of such a system in all tracts to which it is suitable, and in which the land-owners are not opposed to its introduction.

Fluctuating system of assessment has been or will be introduced in every part of the Punjab which needs it.

9. The extra charge involved in the control of such fluctuating assessments is extremely small. The annual measurements are effected by the Patwárís; and a small outlay in extra stationery, plus an addition of 4 or 5 extra Kánungos (at Rs. 20 per mensem each) per district is usually all the extra expenditure required. And so far as it has been introduced, the system is said to be much appreciated by the people.

Expenditure entailed by its introduction, but small.

10. Their opinions on the subject are usually expressed with less reserve than we should expect. For instance, in the Jhang district, which adjoins Mooltan and Muzaffargarh to the north, the owners of the Chenáb and Jhelum alluvial lands strongly deprecated the extension to their district of the fluctuating system applied to the like lands in Mooltan and Muzaffargarh. And the Settlement Officer of Jhang was able, after inquiry, to show that their objections were based on substantial reasons; the action of the Chenáb not being so capricious in the Jhang district as on the lower part of its course. On the other hand, I believe that the owners of like lands on the Rávi in the Montgomery district (also a part of the Mooltan Division) lately petitioned the Financial Commissioner for the extension of the fluctuating system to their lands, on the ground of the extremely capricious action of the Rávi floods; asking leave to surrender the fixed leases imposed some 10 years before.

Opinions of the people on the system expressed without reserve. Gives instances in point.

11. In short, experience so far goes to show that the land-owners gladly accept a system of fluctuating assessments wherever the success of the harvests is usually uncertain and the conditions of agriculture capricious. But in tracts with a rainfall usually sufficient, or which contain sources of irrigation which are reliable and under their own control, they would

Fluctuating assessments popular with the people when conditions of agriculture are capricious; otherwise fixed assessments preferred.

oppose strongly any attempt to alter the fixed nature of our ordinary assessments, which place a contract valuation on the land revenue of each village for 20 or 30 years, and leave to the owners whatever profits they can secure by extension or improvement of cultivation or by new irrigation.

Memorandum by D. IBBETSON, Esquire, Settlement Officer, on fluctuating assessment in dry tracts.

Need for a more elastic revenue system.

I AM very strongly of opinion that a system of fluctuating assessment in tracts wholly dependent upon very uncertain rainfall would not only be an immense relief to the people but would very materially enhance the gross Government revenue. The present system of fixed demands is based upon the supposition that the people will save the surplus of good years out of which to make good the deficiency of bad years. But the actual working of the system is, that in a bumper year in which the people could in a tract like the Nardak, pay perhaps *double* the fixed assessment with ease, the whole proceeds are expended; so that when a series of bad years comes, Government, which does not share in the profit of the good years, is *compelled* to remit revenue.

And this is not the only way in which the rigidity of our system diminishes the receipts of the State. As remissions are, properly enough, given with great reluctance, the Settlement Officer hesitates to impose, and as a fact does not impose, the full demand which might safely be imposed if the revenue system were more elastic; so that we have an inadequate initial assessment still further reduced by occasional remissions.

At the same time, in years so bad that the revenue is paid with difficulty, but not so bad as to justify remissions, the buniah is had recourse to as a matter of necessity; and the ruinous terms on which the money is borrowed eat up the profits of subsequent good years, which consequently benefit neither the land-owners nor the State.

A system under which Government should compel the people to provide for bad years in good ones, by authoritatively taking part of the surplus in the latter, and correspondingly relaxing its demand in the former—a system, in fact, of compulsory insurance—would enable the State to exact in the long run an amount corresponding far more nearly with its just share of the total profits of the land than that which is now realised; while the adjustment of the burden totally with the means of bearing it would enable the people to pay the larger sum with far less difficulty and injury than they now experience in paying the smaller.

Annual assessment.

2. There are two ways in which the proposed end might be obtained. The Settlement Officer might fix for each village what appeared to him a fair assessment for an ordinarily favourable harvest, and perhaps also fix a maximum of 150, 175, 200 per cent. of this sum, or whatever might be thought advisable, beyond which the demand should never rise, even in the most exceptionally good season. It would then lie with the Deputy Commissioner on consideration of the circumstances of each harvest to decide what proportion of the average demands so fixed should be exacted throughout the tract, no debtor and creditor account being kept, and the assessment being solely concerned with the particular harvest to which it referred. The great objection to this plan is that it almost entirely does away with all idea of a settlement of land revenue or a limitation of the Government demand. The Settlement Officer's assessments would be simply guides, and it would depend upon the indiosyncracy of each Deputy Commissioner whether the assessments were heavy, light or moderate.

Cyclical assessments.

3. The second plan would be to fix absolutely the amount of the Government demand, but for a term of years (there is something to be said for, and nothing against the sunspot cycle of 11 years) instead of for each year. The village annual assessments would be announced at one-eleventh of the total demand for the cycle, so as to serve as units of account; and the Deputy Commissioner would decide for each harvest what proportion of these amounts should be taken throughout the tract. This plan combines all the advantages of ultimate fixity of demand with those of elasticity.

The difficulty would arise at the end of the cycle. Supposing there is the merest fraction of revenue due, and that the last year yields splendid crops, are the people only to pay the small remainder due? It is certain that if a heavy demand is due and the last year's crops fail, the balance will have to be suspended; but notwithstanding this, I think that on the whole it would be wiser to be bound absolutely by the demand of the cycle, and not to realise more than what is due on that demand even though the last year be super excellent. And *per contra*, I would in no case remit any revenue due at the end of the cycle; and would, if it was necessary to suspend it, charge interest at a moderate rate on the balance till it was repaid. This is, to my mind, the most practical and hopeful scheme which I know of.

I agree; but I think the zemindárs if consulted would sometimes prefer in such a case to pay up a full year's revenue, and so begin the next cycle with a balance to their favour.

J. B. L.

Interest bearing suspensions.

4. It has been proposed to modify the existing system only in so far as to grant suspensions much more readily than is at present done, and to charge interest upon the balance suspended. This would be a great improvement upon the present system, but would, I think, fall far short of what is needed. It would be, in its practical working, and when suspensions were once started, very like the second scheme above described; with the important difference that, while less than the annual demand would be taken in bad years, no advantage could be taken of a good year to take more than was actually outstanding; that is to say, nothing could ever be taken in advance. But a far more serious defect is that the scheme throws the onus of making out a case for interference upon the zemíndár. There is always a great temptation, except in presence of actual palpable distress, to leave things as they are; and I doubt whether suspensions would in practice be proposed much more freely than they are at present. Under the cyclical scheme the Deputy Commissioner would *have* to fix the amount to be taken each harvest; and if he fixed it at the average annual assessment, would have to show grounds for that decision just as much as if he fixed it at double that assessment.

Minor details.

5. It is, I think, important in all these schemes that tracts should be treated as wholes, and that no attempt should be made to treat each village separately. I mean that the Deputy Commissioner would announce that in the Karnál Nardak, for instance, two-thirds of the average annual assessments would be taken during the current harvest, and that would apply to every village in the tract. Of course special circumstances justifying special treatment of individual villages could be separately reported just as at present,—hail, or locusts, or the like.

I agree generally in this view; but exceptions, fully justified by exceptional character of harvests, should be freely allowed. The separate treatment of individual villages would not lead to jealousy, corruption of officials, etc., when it was understood that the full demand for the cycle would be exacted from all alike.

J. B. L.

Experienced agency a *sine quâ non*.

6. The great difficulty in working any scheme of the nature proposed would be finding capable agents. And, given a good Deputy Commissioner, he must have leisure sufficient and must be left long enough in one place to enable him to make himself thoroughly acquainted with his district. Infinite harm might be done by hasty and uninformed action. In short, the scheme would, I believe, be of incalculable benefit to the State and the people, *if worked well*. But that is an *essential* condition.

I think the district committees would give the Deputy Commissioner the most valuable assistance; and if the character of each harvest and the reasons for each general demand and for exceptions allowed were fully recorded in a register kept for the purpose (as could be easily done), I do not see why one man should not freely succeed another as Deputy Commissioner and carry on the working of the collections for the cycle sucessfully.

J. B. L.

Postscript to Memorandum on fluctuating assessments.

Assessments by rates on annual area.

7. There is one plan which I overlooked in writing my memorandum; and as it is already in force in certain parts of the Punjab, and as I think it not at all suited to the tracts under discussion, I will briefly give my reasons for my opinion. I allude to the plan which I understand to be followed in the *sailáb* tracts of the Indus, of fixing at

settlement a rate per acre to be applied year by year to the area actually cultivated, as got by annual measurements.

The case of tracts with scanty rain-fall seems to me to differ in a very important respect from that of tracts dependent upon river-floods. I presume that, in the Indus sailáb, the floods either come or they do not come, and that when they have come and gone, there is nothing more to be hoped for or feared from them for that harvest; so that the cultivator, when seed time arrives, knows with some approach to certainty what hope there is of an outturn, if he sows, so far at any rate as floods are concerned. But in tracts like the Nardak, the cultivator sows with the first rains; and it is wholly uncertain what the result will be, for the yield depends almost entirely upon the rain which may fall *after sowing*. And this uncertainty extends not only to the yield of the whole crop but still more strongly to the yield of different plots of ground. The people take advantage of all the local hollows and drainage lines that exist in their area; and the cultivation is scattered all over the country, following the lines where rain water is most likely to accumulate. Thus, the cultivation of a village will include all gradations between local basins, where a crop is almost certain if there is one good fall of rain, to almost flat ground where a well-distributed rainfall is needed to bring a crop to perfection. And if the first fall, on the strength of which they sow, is unusually favourable, the people will run a plough over the jungle and sow in places which are not cultivated oftener than perhaps once in 6 or 7 years. This they did in the Nardak some 5 years ago when they had an unusually favourable year. In short, the cultivation occupies all the hollows, and spreads up the sides on to the level flats to an extent which varies with the promise of the season; but the proportion of the area sown which will produce a crop depends largely upon the rainfall *after sowing;* and a margin, wider or narrower as the case may be, almost *always* fails, and is in fact expected to fail. Now, any system which should hinder the people from thus taking advantage of a doubtful hope of produce, and should tend to make them confine their operations to the limited area in which a crop is more or less certain, would be most pernicious in its effect. And the Indus system would surely do this. To put it mathematically, the "expectation" of a crop calculated at seed time varies from field to field between unity and a very small fraction. Still, so long as that expectation is equal to the very small labour and cost of the rough cultivation practised in such cases, it is worth the cultivator's while to sow. But if he also has to set on the other side of the account the *certainty* of having to pay a fixed some of money to Government for every additional acre he sows, there will be a considerable area which it will not be worth his while to sow, and which he will therefore leave unsown, but which might have yielded a very material increase to his harvest.

Yes, in the Mooltan and Deraját Divisions a crop sown in land which has been moistened by the sailáb or river floods hardly ever fails completely, even if the winter rains fail. This is also true of the bands or embanked fields in the Daman or Rod Kohi country of Dera Ismail Khan, for which a system of fluctuating assessment has been introduced.—J. B. L.

NOTE by F. C. CHANNING, Esquire, Settlement Secretary to Financial Commissioner, Punjab, dated 15th August 1879, on the question of the desirability of introducing a system of assessments, varying according to the season, into parts of the Punjab.

Tracts in which a modification of the present revenue system is most required.

AT page 46 of the report drawn up for the Famine Commission, Major Wace pointed out that the tracts in the Punjab which are most subject to sufferings on account of draught are the districts of Gurgáon, Rohtak, Hissár and Sirsa, the tahsíls of Kaithal in Karnál and of Pipli in Umballa, and the southern portions of Ferozepore and Ludhiána; and there can be no doubt that these are the tracts in which, if anywhere, a modification of the existing revenue system is required. In the sub-montane districts, with their heavier rainfall, droughts are of rare occurrence; in the arid districts of the south-west of the Punjab the average rainfall is insufficient for the production of unirrigated crops, and the cultivation is therefore almost entirely confined to the lands flooded by the rivers or irrigated from wells or canals; while the systems of assessment recently introduced and described by the Settlement Commissioner in his letter No. 235, of 29th May 1879, provide for such degree of uncertainty as attaches to cultivation dependent on the height of the river-floods. In the Jhelum,

Shahpur and Bannu districts there are indeed tracts where the bulk of the cultivation is dependent on a rainfall of a comparatively scanty amount, but a larger proportion of the annual down-pour takes place in the winter months, the pressure of drought appears to be more rarely felt, and the necessity of any special system of assessment is smaller than in the south-east of the Punjab, where the bulk of the cultivation is more dependent on the autumn rains. And, indeed, it is not always in the districts of which the rainfall is most scanty that special measures are most required. As pointed out above, the rainfall may be so small that the population do not at all depend on the rain cultivation, even if it is occasionally practicable; or droughts may be of such frequent occurrence that the population may be kept of a number and of habits of life adapted to their circumstances, and the revenue demand may have been fixed at a very low figure by the assessing officer, in order to meet this low average of annual production. At page 405 of the report above referred to, Mr. Stogdon, Officiating Deputy Commissioner of Hissár, notes that the frequent droughts in that district have kept the habits of life of the population such that they do not suffer so severely in bad seasons as do their brethren in ordinarily more favoured districts. At page 423 Mr. Walker, Settlement Officer of Ludhiána, writing of the southern part of the district, states :—"The soil though light and sandy is most fertile, and in a good year the supply of grain from a holding is much more than sufficient for the support of the household. The surplus is either stored or sold, and the proceeds laid away or lent. If there is a scanty rainfall, the people are not at a loss. What generally happens is this. There is no fodder for the cattle (as there is no land left for grazing in the whole district), and the cows and buffaloes are sold for almost nothing, or die. The men of the family leave the other members to subsist as they can on the store of grain hoarded and go to seek work elsewhere. Few zamíndárs' houses in the district are without a cart, and the men, yoking their bullocks, not now required for agriculture, into this, go off to Lahore, Pesháwar and Delhi, conveying goods for hire. In a few months they return with earnings sufficient to live over the bad harvest." So too at paragraph 7 of the Muktsar Settlement Report Mr. Purser writes :—"In unfavourable seasons the well-to-do zamíndárs, with the old men and women, stay at home, and the rest of the population emigrates. Some take the cattle to Baháwalpur, or Bikaner; some go and cultivate any land they can get on the river or along the canals of the Bári Doáb; and some hire themselves out as daily laborers. As soon as there is a good season, they all come back not at all the worse for their sojourn in foreign parts." In such tracts the revenue is generally very light, and the surplus left to the revenue payer in good years so large, that there is the less necessity to grant suspensions or remissions in unfavourable seasons. But if the rainfall is in all ordinary seasons sufficient to raise an unirrigated crop, and droughts are of comparatively rare occurrence, there the assessment based on the average production will be higher and the population will be more dense and less accustomed to provide for itself in years of famine; and if the people be naturally improvident by nature, and the cultivation be mainly dependent on the autumn rains, and artificial irrigation to any considerable extent be impracticable, it is in such a tract that the effects of drought will be most severe.

Systems under which the revenue would most closely follow the variations of the produce.

2. It is evident that the system of a fixed assessment levied without regard to the character of the season is not that on which the Government can obtain the greatest amount of land revenue. The Government desires to obtain a regular flow of revenue from an intermittent source, and it can only do so by means of a reservoir, which sucks up no small proportion of the supply. The ordinary agriculturist, partly from his want of capital, partly from his character, cannot pay an unvarying annual assessment without resort to the money-lender, who has to be paid for his trouble; and this payment is in fact partly at least made by the Government in the shape of the smaller sum, which it is in this manner able to levy: it has to pay a heavy tax for the regularity of its income,—a far heavier tax than it would have to pay, if it consented to receive a fluctuating revenue, itself exercising in prosperous seasons the forethought which it inculcates on the zamíndár, and contracting, if need be, temporary loans in unfavourable times at a much lower rate than it now pays through

the zamíndár to the village bunniah. The only systems under which the revenue collected would closely follow the amount of produce, are, I think (1) :—collections in kind; (2) collections based upon annual measurements of the cultivated area; and the introduction of either would (unless in a modified form which I will hereafter suggest) require greatly increased establishments, and very efficient supervision. The second system would also fail to meet the ordinary fluctuations of seasons which are felt rather in the outturn than in the area cultivated. The modified system under which I think it might be practicable to levy the revenue in kind was suggested to me by an arrangement, which was not unfrequent in the parts of the Gurgáon district, settled by Mr. J. (the late Lord) Lawrence, and which certainly enabled many villages to pay a much higher assessment than they could otherwise have done. This will be found fully described and its effects discussed in paras. 37 to 41 of Mr. Lawrence's settlement report of parganah Rewári, dated 22nd July 1838, printed among the appendices of the statistical account of Gurgáon, and reprinted among the selected reports of the Delhi territory, published at the Secretariat Press at Lahore in 1874. Under the system which I am contemplating, the settlement made with the owners of the village would merely state the share of the produce which the Government would take during the term of settlement; these rates would, if necessary, be different on báráni, cháhi and sailáb lands; and as is usual, where rents are taken in kind, cash rates would be fixed for crops grown for fodder, such as charri and for those of which the cultivation is abnormally expensive, such as sugar-cane. The rates fixed would be about one-half or two-thirds those paid by tenants-at-will, according to the way in which the cesses were levied. The Government share of the produce thus due would then be assigned to some man of capital sufficient to meet the vicissitudes of seasons; and he would convenant to pay the fixed assessment with or without cesses in cash. The contractor or joint contractors for the lease should, if possible, be the leading men of the estate, and should always, where the arrangement was at all feasible, be chosen from among the leading agriculturists of the neighbourhood. The change in system would in many cases be simply from a system, under which the bunniah paid the revenue, and received the produce, to one under which the intermediate agency would be entrusted to the natural leaders of the people, the small country gentry, and the ordinary agriculturists would pay a probably smaller share of their produce on account of the Government demand than they hitherto had done. The relations between the land owners and the cash contractors would be similar to those existing between occupancy tenants who pay in kind and their landlords, who I believe generally manage to amicably settle the division of the produce; and the contractors, while having no actual power of interference, would be interested in promoting the extension and improvement of cultivation and in aiding the owners to meet bad seasons.

Other systems:—
(a) Cyclical assessments.
(b) Suspensions.

3. The other two systems which have been proposed, and which are intended to adapt in a smaller degree the payment of the annual agriculturist to the amount of his produce, are:—

(1)—The fixing the demand for a cycle of years, and then annually, leaving a proportion of the total, which would vary according to the character of the season; and

(2)—fixing the annual demand as at present, but providing for the ready grant of suspensions, or even, if need be, remissions in unfavourable seasons.

Previous references to these systems.

4. Both these systems have at different times been recommended for adoption. Sir Henry Davies, in discussing the questions connected with the transfers of land from agriculturists to the money-lending classes, wrote as follows in para. 61 of the Review of the Revenue Report for 1871-72:—"The system of a fixed demand introduced

Sir H. Davies.

from a Province where the rainfall was fairly abundant, presses sometimes hardly on Punjab tracts like Montgomery and Muktsar, where, in a cycle of ten years, two may produce excellent

crops, five seasons may be moderate, and three may utterly fail. In tracts so situated, timely remission of the demand can alone save the proprietors from debt. It might be practicable, His Honor believes, to fix for such exceptionally situated districts a lump assessment calculated on the average outcome of a series of years, and allow the District Officer, in a bumper season, to realize double, or even more, the average demand, collecting half, or nothing at all, in a year when the harvest was bad or had altogether failed. It is probable that such a system, if carefully watched by officers with leisure to make themselves fully acquainted with their districts, would result in no loss to the Government; while the increased collections in plentiful years would not be felt by the people. Now, the remission is often proposed when it is too late to save the village, the lands of which have been mortgaged before the Government can render assistance."

NOTE.—This was written after I had verbally brought the subject to notice and suggested a kind of cyclical assessment for Muktsar and fluctuating assessments of sailába land for Montgomery.—J.B.L.

Muktsar.

Mr. Lyall, when Settlement Commissioner, forwarded with his letter No. 12½, of 4th April 1874, a memorandum on Mr. Purser's assessment in Muktsar, in paras. 4 and 5 of which he advocated the adoption of the system in that tract. I quote his remarks in full, and also the 6th para. of Mr. Purser's report :—

Para. 6 of Mr. Purser's Report.

"I think the new jamas will be found to press heaviest in the Rohi Chak and in the Muhammadan villages to the north-west of Muktsar Khas. As far as I could ascertain about three-fourths of the villages were contented with the jamas, and the rest were not. I explained to the principal men the plan proposed by His Honor the Lieutenant-Governor in paragraph 61 of the review of the last Revenue Report of having the one anna of a cycle of years fixed, but varying the amount collected each year with reference to the character of the seasons. They entirely approved of it, and consider it might be introduced into Muktsar with the greatest advantage. The benefits conferred by it on the people are obvious.

Paras. 4 and 5 of Mr. Lyall's Report.

"4 With reference to these great variations in the value of the outturn of the crop, Mr. Purser in his sixth paragraph suggests the introduction of a new system of collection in Muktsar. The novelty in it amounts really to not much more than this, that it gives the Deputy Commissioner, who at present only has power to suspend, power also to collect in advance. The jama of a village would be a sum payable in a cycle of years, not in one year. For example, take ten years as the cycle for Muktsar, and a village now assessed at Rs. 100 per annum. The jama of the village would be Rs. 1,000 payable in ten years, in instalments of, say, from Rs. 80 to Rs. 10 per harvest, according to the quality of the crop. The Deputy Commissioner might be told to collect at the following rates :—

For a good harvest	(above 12 annas)	...	...	Rs.	80
For a fair do.	(above 8 annas)	...	...	,,	60
For a poor do.	(above 2 annas)	...	...	,,	40
For a bad do.	(2 annas or less)	...	...	,,	10

At a rough guess there would probably be in a cycle of ten years 5 good, 6 fair, 5 poor, and 4 bad harvests or total failures of crop; so that if the Deputy Commissioner collected at the above rates he would collect the full Rs. 1,000 in the cycle. Towards the end of the cycle, if the Deputy Commissioner found the village had a good deal left to pay, he would take the higher rates, whether the harvest was quite up to the mark or not, so as to ensure the collection of the whole jama in the cycle. But of course if there had really been an unusual prevalence of bad harvests in any ten years, it would be a good ground for remissions.

"5. In my opinion the system might be tried with advantage in the Rohi circles of Muktsar. It would certainly tend to keep the zamíndárs from getting deep in the books of the money-lenders, and I do not see that it ought to be hard to work. The crop in these tracts does not vary much from village to village; if there is a good crop in one village, there is an equally good one in

all, or in all but those in some particular corner which the clouds may have avoided. The general character of the crop, good, bad or indifferent, is easily ascertained."

With reference to this proposal the Financial Commissioner, Mr. Egerton, remarked as follows:—

Financial Commissioner's views.

"Mr. Egerton does not think it necessary to depart in this tract from the mode of collection which has hitherto prevailed; the assessment has been fixed at a rate which can be ordinarily paid with ease, and he does not wish to give the Deputy Commissioner power to collect in advance in good years, and he thinks that in no possible way can the necessity of giving relief in exceptionally bad years be avoided with a money assessment."

Lieutenant-Governor's views.

And in paragraph 5 of the Secretary to Government's reply No. 1361, of 14th August 1874, it was stated:—"The Lieutenant-Governor agrees with the Financial Commissioner in thinking that it is not necessary to depart in this circle from the mode of collection which has hitherto prevailed. His Honor doubts the possibility of making collections in advance. At least without causing general discontent, suspensions should, however, be freely granted in this tract when the necessity arises, but remissions be avoided as much as possible." This system of cyclical assessments was again referred to in connection with the assessment of Marwat in Bannu. I quote paragraph 31 of Mr Thorburn's report and paragraph 11 of Mr. Lyall's review as Settlement Commissioner.

Para. 31 of Settlement Officer's Report.

"I may bring this report to a close by stating my opinion that I do not consider the assessments too high, provided that either a cyclical system be introduced or suspensions and occasional remissions of demand be made in seasons of drought. In the former case I think the cycle should be 8 or even 10 years, and not 6 as I wrote to you in my No. 72, dated 10th October last. A better knowledge of the subject, and a more careful study of the rainfall and rise and fall in prices of staples in the last 20 years have convinced me that though ordinarily 6 years is a cycle, yet it sometimes is not. The Marwats themselves do not seem to desire a cyclical system, because it would be an innovation, and because they think that by a continuance of the present system they will be gainers. They reason thus:—'Under a cyclical system we shall have no remissions and be more or less at the mercy of the Tahsíldár; but under the present system, now that the condition of every village is known, we shall certainly receive remissions in seasons of drought, and the caprice of the Tahsíldár will affect us less.

"If a cyclical system be not adopted, I am of opinion that as a general rule the annual fixity of demand must be occasionally relaxed at least to the following extent:—

"Failure of kharíf crop should at most be a cause for a suspension, and that only for the Pakha Circle (IV).

"2. On failure of one rabi crop, half the annual demand should be suspended.

"3. On failure of two rabi crops in successsion, the sum suspended in the preceding year should be remitted and another similar suspension be granted.

"4. Except in a very exceptional series of bad years, suspensions alone should suffice for the Pakha Circle (IV), and none should be required at all for the Nar Circle (VI), or for irrigated lands of Tandobah Circle (V), unless in the case of the reh evil greatly increasing, when a reduction of jama will be necessary; but for the other circles and the Thal portions of the Tandobah Circle (V), remissions will be occasionally required in addition to suspensions. The average annual rainfall of Marwat is, it should be remembered, only 8·9 inches, or half that of Muktsar, and very little over half that of Yusafzai, with both of which it has sometimes nevertheless been compared."

Para. 11 of Settlement Commissioner's review.

In paragraph 13 Mr. Thorburn states how the proposed assessment ought, in his opinion, to be worked. By a cyclical system he means a plan whereby a village would engage to pay

so many rupees in a term of, say, eight years, instead of so many rupees per annum. The Deputy Commissioner would roughly proportion the demand for each harvest to the yield. He would also, of course, be partly guided by the price-current, and, towards the close of the cycle, by the proportion of the sum total which the village had already paid in. At present the Deputy Commissioner can suspend in a bad season, that is, postpone a part of the demand in the hope that the next season may be favorable; but he cannot collect anything in advance in a series of good seasons. Our system of fixed annual demand supposes that the zemíndárs will store up part of the profits of good seasons wherewith to meet the demand in bad ones; but the only way in which the poorer peasant proprietors can do this is by having running accounts with their bankers, and the terms upon which their bankers conduct their dealings tend to drag all but the very lucky or thrifty small proprietors into debt. We at one time thought of proposing a trial of this so-called cyclical system of collection of revenue in the sandy circles of Marwat; but as a similar proposal for Muktsar was not approved by Government, though the lambardárs of Muktsar readily consented, we do not recommend it here, where the people seem to be opposed to it. In its place Mr. Thorburn makes certain detailed suggestions for a more than usual liberality in allowing suspensions and remissions in certain circles and under certain contingencies. These suggestions appear to me to be very practical and judicious. The assessment is not up to half assets, but we expect that its pressure will gardually reduce most of the poorer Marwats to non-proprietors unless its annual fixity is relaxed in this way."

Rohtak.

In Rohtak the inapplicability of a rigidly fixed annual demand was pointed out by Mr. Fanshawe in para. 84 of the Gohána Report and 68 of the Rohtak Report, which I give below *in extenso*;—

Para. 84 of Gohána Report.

" And in view of the present season I may say that the revenue assessed on the rainland villages is too high to be realized without suspensions in cases of total failure of the crops of any harvest. I believe that it would be impossible to pitch any revenue so low that it could be collected at all seasons in this country without sacrificing the Government revenue most unnecessarily. Rohtak is emphatically a tract unsuited for a too rigid revenue system. With sufficient rain the crops grow with extraordinary facility and luxuriance, while in a season of drought not even a blade of grass remains on the country side. Hard working as they are, the Jats are a very thriftless people, and if they do not waste the gains of a good year on marriages, they probably invest them in cattle, only to see them die when a famine comes. It must be remembered that the population is too dense to allow large stores to be put aside for a season of want. It is the fashion to run down the Indian ryot very unfairly in this respect. Let any one look at the list of bankrupt farmers at home after two bad seasons, and guess what would be the case had two crops entirely failed or had never been sown. When we see a mining population, whose men earn on an average in two months all that a ryot does in a whole year, brought to the verge of starvation by an eight months' lock out, it can hardly cause surprise if the agriculturist here is unable to live for a year-and-a-half on the produce of a single harvest. I can only report that suspensions of revenue will always be necessary in years when the crop fails, and that these rates are pitched as high as they are on the supposition that such suspensions will be freely given. Is it not possible that a system of charging 5 or 6 per cent. on the suspensions up to date of payment could be introduced? The people at least would readily hail it as it would save them from borrowing the money suspended at least 18 per cent. interest from their traders.

Para. 68 of Rohtak Report.

" The remarks which I have made concerning the suspensions of revenue in Gohána bear a much intensified force as applied to Rohtak. If, with the light revenue then existing, large suspensions and remissions were made in 1862-63 and 1868-69, it is certain that still larger suspensions will have to be made in famine years henceforth. Even if we were to reduce the existing revenue of Rs. 1,78,660 to Rs. 1,50,000, it would be most unwise, if not impossible, to collect it after two harvests have completely failed. Transferred to us only 20 years ago, less is probably known as to the special peculiarities of the districts of this division than of any part of the Punjab. The soil is exceedingly fertile in seasons of good rain, and

occasionally, as in 1875-76, a crop is reaped which will suffice nearly for two whole years; but in seasons of drought the very grass disappears from the face of the earth. At least two-thirds of the villages of the tahsíl date their refoundation from the terrible "chalisa" (1780-82 A.D). Even now population varies considerably according to the seasons, and a famine shakes the strongest even of the communities to their very foundation. Strenuous as he is in work, the Jat sadly lacks sense and forethought. It will always be necessary to grant suspensions of revenue in years when both harvests fail, and they should be granted unstintingly. The recovery of the balances should be gradual, say over 4 harvests, and perhaps 5 per cent. interest might be charged on balances up to date of payment. A rigid revenue system is quite unsuited to this tract, and the unappreciative insistence of such a system may work vital harm at any time. It cannot henceforth be laid down as a broad rule that the revenue is so light that its collection should be insisted on: we may need to teach the people thriftiness and forethought, but we shall hardly do so by a rigid revenue demand which plunges him into liabilities seldom shaken off afterwards. My proposals are distinctly on the basis that suspensions will be freely granted in all such years as the present is, or 1862-63 and 1867-69 were."

With reference to these suggestions Colonel Davies remarked as follows:—

"The additional Financial Commissioner fully concurs in Mr. Fanshawe's remarks in para. 68; and his view that the Settlement Officer's rates should be accepted is based on the assumption that suspensions will be freely granted in years of agricultural distress. He is in favour of levying interest (even higher than 5 per cent.) on balances, in order to thus avoid placing the provident on a level with the improvident land owner; and also to constitute a self-acting check on unreasonable demands for suspensions. Such a check is, he thinks, needed; it will help to obviate the danger of unnecessary suspensions, which might arise in districts controlled by inexperienced or too facile revenue officers."

Discussion of these two systems.

5. Of these two systems the plan of cyclical assessments is subject to the disadvantage that it can only be introduced at the time of settlement; it is, too, only applicable to those tracts in which the failure of the rain-fall is of frequent occurrence, and in which therefore the people are most accustomed to provide against its effects. Of course such tracts might be much more highly assessed when they again come under settlement, if it were distinctly recognized that the payments would be allowed to vary with the season; but the cyclical system appears to me to be beset with many difficulties. As Mr. Purser has pointed out in his letter No. 210, of 29th May 1879, it would be very difficult to work. It would not be at all easy to decide the proportion of the total demand which should be exacted in each year; and if the fixed cycle opened with good seasons, the people would, I think, be very reluctant to pay more than the year's arithmetical share. They would at any rate, I think, be far more willing to pay revenue the exaction of which had been deferred on account of bad seasons, than to pay revenue in advance, even although interest were allowed them on excess payments. In tracts like those which form the greater part of Hissár and Sirsa districts, which will soon come under settlement, some such system would indeed, I think, be preferable to a rigid annual collection of a fixed revenue, unless this were extremely light; but even in such tracts I should prefer the second system, under which the demand would be fixed and would be collected in seasons of ordinary prosperity, but under which suspensions of the demand would be promptly given in seasons of disaster. This system too has the advantage that it could be introduced at any time into any district in a modified form. It is indeed already in force, as Commissioners are empowered to grant suspensions. All that would be required would be a distinct declaration of the desire of the Government that, whenever the harvest had notoriously failed, suspensions should be freely granted to the extent of either the whole or a portion of the demand according to the character of the harvest. I consider that such action on the part of Government would often enable a district to pull through a season of drought with comparatively little suffering and obviate the necessity of other special measures of relief. If the Government exacts the payment of the revenue due in a

More willing perhaps, at any rate till the system got familiar to them; but would they be more able to pay or nearly so able?—J. B. L.

district in which the crops have failed, its demand can only be met by drawing on the capital in the hands of the money-lenders and the more provided agriculturists; and the ability of these to aid by loans those who must borrow in order to subsist and to till their fields, will by so much be diminished: the revenue payers must, if they have stocks of grain on hand, sell these to pay the assessment: the money-lenders must deplete their hoards, and if their resources in cash are insufficient to meet the demand made on them, can only replenish them by exporting from such stocks as they possess; the agriculturist from his diminished stocks is so much the less able to support the village dependents: the money-lender is so much the less able to grant advances to the agriculturist, and has a smaller capital available for the import and distribution of grain: prices are consequently forced to a higher level: the State has to open relief works for the support of the poorer rural population, and is forced to grant advances in order to prevent the land falling out of cultivation. Of course it is not every partial failure of the crops, or even every total failure, if the population is provident and the past seasons have been good, which will cause all the above effects to be felt to the full; but I think that the Government should always be very careful how by the collection of its demand it intensifies the strain to which every district must be more or less subject in years when what is in most districts the one source of wealth has failed; for if the stocks in hand are not sufficient to support the population until the next favourable harvest, and to meet the Government then it must either supply the deficiency it has caused by expending in a more clumsy and less economical way a large, sum than it has collected, or it must be content to have caused avoidable suffering, disease and death. On the other hand, I think that it is certain that if suspensions were freely given, and did not involve the payment of interest, they would be constantly and unnecessarily applied for, and very often unnecessarily granted; nor would the Government be so willing to grant suspensions actually needed, wherever the necessity chanced to occur contemporaneously with low Treasury balances. I question too whether the charge of interest at a lower rate than 12 per cent. per annum would be sufficient to keep the grant of suspensions within reasonable limits: if only 4 or 5 per cent. were charged, the temptation to the zemíndár would, I think, be too great to ask for suspensions when these were not really needed; and I think that the State would be fully justified in charging Rs. 12 per cent. to meet the risk of bad debts. This rate would, I think, be high enough to induce the zemíndár to pay his assessment in all ordinary seasons, while in years of distress he would be only too glad to pay a rate of interest so much lower than that ordinarily charged at such times by the money-lenders. As to the recovery of the arrears and of the interest, it is but natural to expect that when the good seasons followed the people would at first attempt to avoid payment; but they would, I believe, recognize the justice of the Government claim, and as soon as they become convinced that they were meant to pay, would do so contentedly enough. Of course, if the resources of a district were thoroughly crippled by a succession of bad harvests, it might be necessary to remit the whole or part of the arrear claims; but this necessity might arise under any system.

Memorandum by H. C. Fanshawe, Esquire, on Assessments fluctuating according to seasons, dated 12th October 1879.

Among other Revenue Officers of the Province I was requested by the Financial Commissioner to write a brief note on the above subject, in view of the opinions which I had expressed in two Assessment Reports of the Rohtak district, on the desirability of a less rigid revenue system in unirrigated tracts of uncertain rain-fall. During my absence in Kashmír I was unable to refer to any of the papers necessary to enable me to do this; and I therefore venture to record this note now after perusal of the other opinions submitted to Government by the Financial Commissioner.

I am the more anxious to do so, because I wish to show in figures with relation to a district with which I am well acquainted, how I think that a cycle system might be worked in practice. I do not intend to discuss here the proposal advocated by Mr. Channing, that suspensions of the revenue should be freely and systematically made in districts dependent on a variable rain-fall,

because I have dealt with this in the Assessment Reports. I did not, however, propose there that interest should be charged on suspensions given *in order* to prevent the people from applying for them unnecessarily, but merely to recoup Government's loss: nothing would stop the people from applying except a rate of interest higher than that demanded by the traders at such times, and which is generally 32—40 per cent. At the same time I consider that such a system is quite elastic enough to meet the wants of the Rohtak district; and though I proceed to try to show that the introduction and working of a cycle system is feasible there, I do not consider that it is absolutely necessary in a fully developed tract with an average rainfall of 19½ inches. But in the two backward districts of Hissár and Sirsa, lying west of Rohtak, and with a rain-fall of only 18 and 16 inches, a cycle system should be certainly adopted, if the interests of both the people and Government are to be duly considered. To these we may add Muktsar, with a rain-fall of 12½ inches.

2. The seasons of the last 35 years in the Rohtak district have been as follows:—

Good	6
Above average	5
Average	15
Below average	2
Bad	3
Fámine	4
Total ...	35

The recurrence of bad seasons does not show anything of a cyclical nature to guide us in fixing the term of our revenue cycle; but as the famine years occurred in 1838, 1862, 1868 and 1877, with moderate intervals between each, we may take a term of 10 years for the present purpose. Roughly calculated, a cycle of 10 years on the basis of the past 35 would show the following seasons:—

Good	2
Above average	1
Average	4
Below average	1
Bad	1
Famine	1
Total ...	10

These proportions are quite as nearly correct as need be for the subject in hand, and there are as many seasons below the average as there are above it. Now, let Rs. 100 represent the revenue of each year, and Rs. 1,000 the revenue of the 10 years' cycle, and let us say that in the famine year we will take no revenue at all, in the bad year 50 per cent. of the revenue only, and in the below average year 75 per cent.; this gives a loss of Rs. 175 out of the Rs. 1,000, which must be made up in the other years. To do this we will take 12 per cent. extra on each average year = 48 per cent.; 30 per cent. extra on the above average year; and 50 per cent. extra on the two good years = 100 per cent. This gives us a gain of Rs. 178 as against a loss of Rs. 175. It might not be safe, perhaps, to count on two good years in the cycle; but, on the other hand, it would seldom be necessary to remit the whole revenue of a famine year. These figures are admittedly rough, but they will serve to show the method of the system proposed. Now, in the purely rain-land tracts of Rohtak which are more backward, the incidence of the new revenue demand all round is 12 annas an acre, and as each cultivator holds 8 acres, his yearly revenue is Rs. 6. In the good years, therefore, when he would be rolling in plenty, he would have to pay only Rs. 9; in the above average year, about Rs. 8; and in the average years Rs. 6-12, or 13 annas 6 pie per acre instead of 12 annas. In the other rain-land tracts of Rohtak the general incidence of the revenue is Re. 1—Re. 1-1 per acre; but the proportions will be just the same as in the western villages; and in the districts for which the system is proposed, the revenue would be much lighter than in Rohtak. Cesses should be subject to exactly the same variations as the land revenue demand itself.

3. It is clear, then, that the burden thrown on the cultivator by the new system will be very easily borne by him. It remains to be seen how the results would affect the revenue accounts and administration of the Government. The estimates of revenue it need not affect at all; the yearly estimate would be put at Rs. 100 on the above basis, and over the ten years this would tally with the receipts. Moreover, the tracts affected are limited in area, and after all, though their revenue is capable of considerable enhancement under the proposed system, it is not in itself a large sum so far. As regards the revenue administration, I am unable to see any insuperable, or even great, difficulties in the way of the working of the plan. The cycle, and the amount of revenue which each class of season should pay, would be fixed by the Settlement Officer under the direction of his superior officers in the usual way that assessments are now fixed by him. The Deputy Commissioner would have to determine the character of the season. This would not be difficult, I think. The rain-fall of the year and its timeliness form always a very safe guide if no calamities supervene, and the extent of the crop is the next important thing to look to. Our revenue demand in these tracts is so moderate, that it can be easily paid if only there is a crop of decent extent, and it will be quite unnecessary, as a rule, to go into the question of the probable yield of the crop. A few weeks galloping over the district, in years when the nature of the harvest is doubtful, should soon set the matter at rest with the help of the collected and recorded revenue knowledge which now exists in the village note-books of recently revised settlements. The members of the District Committee and zaildárs could be made to supply much useful information on the subject. The Deputy Commissioners of the neighbouring districts should be freely communicated with, and the forecast of the crop made as general as possible in point of extent of area; and finally, a brief report would be submitted for the Commissioner's sanction, showing what revenue it was proposed to realise, and the grounds for the proposals made. All important facts should be entered up duly in the village note-books, English and Vernacular, and after a few years the Deputy Commissioner would have a safe guide as to the character of a season, and the revenue which should be realised on it in the facts recorded before him. The character of the season should determine the revenue to be collected from each tract; but in bad years it would not be necessary to give the same proportionate suspensions blindly to every village; the circumstances of each would be duly considered, and though the whole sum suspended should not be greater than that sanctioned for the tract, there would probably be many reasons why that suspended in individual cases should exceed the proportionate share of the village revenue calculated upon the circle basis.

4. The full revenue of the tract would be collected over the period of the ten years, and, as a rule, this would certainly be done: in fact, we may be sure that at first there would always be a tendency to over-rate the character of the earlier seasons of the cycle. But if a famine or really bad year did occur at the end of the cycle, it would be mere folly to insist on the cycle revenue being made up at any cost. In such a case, a full report would be submitted for the sanction of the Local Government, and orders passed as seemed necessary, either for remissions or to carry the sum due from the people on into the next cycle. But, on the other hand, if the crop of the final year were a bumper, it would not be desirable to take a balance over into the next cycle; the people would not perhaps understand this, and as the extra profits of the year would place them in a better condition to meet future bad years, there is no reason why this should be done.

5. The few Extra Assistant Settlement Officers with whom I have had the pleasure of working, have all been in favour of some such system as the above in arid tracts. I believe that it would tend to keep the people out of debt, and to enable Government to take a greatly enhanced revenue demand. Of course no revenue that has been fixed for a period of years would be raised because the cycle system was introduced into the district concerned; but at future settlements the assessing officer who was working on the new system would be able to pitch the revenue demand much higher than he now dares to do under the existing method.

No. 459 S., dated Simla, 17th September 1880.

From—W. M. Young, Esq., Secretary to Government, Punjab and its Dependencies,

To—The Secretary to the Government of India, Home, Revenue and Agricultural Department.

In continuation of my letter No. 155 S., of 10th July 1880, on the subject of fluctuating assessments of the land revenue demand, I am directed to reply to the second question referred to this Government for opinion by your No. 6-269 of 6th March 1879, *viz.*, whether the Lieutenant-Governor would consider it expedient in the Punjab to invest the courts of various grades with a summary jurisdiction, and when they possess such a jurisdiction, whether it should be extended; and if so, within what limits and subject to what restrictions as to the subject matter of the suits. Your letter directed that the opinion of intelligent Natives, official and non-official, as well as of European officers, should be obtained on the question under consideration.

2. In asking for opinions of officers, the Lieutenant-Governor somewhat enlarged the scope of the question put by extending it to the constitution of special courts to be established in the interests of the agriculturists for the decision of petty civil suits, and desired that the replies might contain all particulars necessary for the practical working of any scheme that might be proposed for that end. Opinions have been received from the Judges of the Chief Court, Mr. Barkley, now Officiating Judge, Major Wace, Settlement Commissioner, the "Anjuman of the Punjab," and the following native judicial officers of the Province:—Khán Bahádur Agha Kalbábid, Rai Gopál Dás, Munshi Ghulám Nabbi, and Munshi Hukam Chand. An opinion by Rai Amín Chand, a native gentleman of the Húshiárpur district, who formerly served in the Punjab Commission, will be found annexed to that of Mr. C. R. Lindsay, late Judge of the Chief Court, at whose request it was furnished; and an article on pancháyats by the same officer, written in 1872, is also forwarded for information. These papers I am directed to submit to the Government of India, and to convey the views of His Honor the Lieutenant-Governor as follows.

3. Sir Robert Egerton concurs with the Judges and Mr. Barkley in the opinion expressed by them, to the effect that it is not desirable to extend the exercise of summary jurisdiction by any courts constituted under the law now in force in the Punjab. His Honor is of opinion, that any relaxation of the provisions relating to appeal or record, in the procedure prescribed for the existing courts of the Province, would be attended with no good result. The question is closely allied to that referred in your No. 16-1136, dated 30th September 1879, to which a reply has been sent under my No. 419 S., of to-day's date. The Lieutenant-Governor does not consider that the officers who preside over courts of first jurisdiction in the Punjab are at present fit, as a rule, for the exercise of summary jurisdiction. The salutary provisions which render it compulsory on the officers presiding over courts of first instance in this Province to make a careful record of their proceedings, and which permit a free exercise of the right of appeal to the higher and more experienced tribunals, offer no impediment to the speedy administration of justice, while they are of great avail in checking irregularities and supplying remedies for inexperience and want of acquaintance with law in the inferior courts. The advantage which might be gained by a relaxation of these provisions, in more speedy decisions and greater finality of litigation, would be more than counterbalanced by the absence of any remedy in cases of legal or practical error in the order recorded. The judicial machinery of the Punjab does not require corrective measures of this kind, and His Honor would view their introduction with some apprehension. But His Honor is not prepared to affirm that the principles which have been laid down for the guidance of the courts are incapable of improvement. The rigidity of the contract system contained in the enactments of the Legislature has a tendency to subordinate true equity—which term may here be understood to mean the expectations of the contracting parties—to the technicalities of legal provisions, in proportion as the administrators of justice are inexperienced and deficient in liberal education; and the grounds upon which the Lieutenant-Governor deprecates the extension of a summary jurisdiction are precisely those upon which he would be inclined to advocate a more clear enunciation of the equitable principle in the rules which guide the decisions of our courts. For this reason His Honor would be dis-

posed to view with favour any amendment in the existing law which might empower the courts of first instance to examine the circumstances under which a bond has been executed in preference to framing a decision without such inquiry, upon the mere proof of the bond; and should the experience gained in other parts of India lead to the conclusion that the exercise of this option is likely to be attended with beneficial results, the Lieutenant-Governor is of opinion that the circumstances of the Punjab present no obstacle to the experiment being made. In this direction only is Sir R. Egerton able to suggest the possibility of an improvement in the existing procedure of the courts of first jurisdiction in the Punjab.

4. With regard to the creation of courts of a lower grade than any at present existing, to be presided over by village headmen or local notables, the opinion of all English officers consulted are opposed to any extension of facilities to suitors in this direction. On the other hand, the Native gentlemen consulted are almost equally unanimous in desiring that petty local courts should be established. The Government of India is no doubt aware that there are already in the Punjab a considerable number of courts which are, generally speaking, of a rural nature, presided over by native gentlemen, whose powers are similar to those of the regular courts. Of 161 Honorary Magistrates of the Province, 50 exercise civil powers in suits varying in value from Rs. 50 to Rs. 500, and in general their courts are very popular and freely resorted to. The existing number of courts in the Punjab, including the above, appears to the Lieutenant-Governor to provide very sufficiently for the convenience of suitors, both with regard to accessibility and number. The statistics of the last Administration Reports of the various Provinces and Government of India show, that while in the Punjab the average distance of each village from the nearest court is 12 miles, it varies elsewhere from 13½ miles in Bombay and 14½ in Oudh, to 20 in the North-Western Provinces, 21 in Bengal, and 23 in Madras; and that, whereas in this Province there is one court to every 36,462 souls of the population, the numbers rise to 62,000 in Oudh, 66,600 in the North-Western Provinces, 97,000 in Bombay, 109,700 in Madras, and 185,700 in Bengal. But although the Punjab would seem already to present greater facilities for suitors than any other part of India, the Lieutenant-Governor does not consider that the opinion of the native gentlemen consulted should be entirely disregarded, and he is willing to try the experiment recommended by them under certain restrictions.

5. Sir Robert Egerton would not attempt to revive the old pancháyat system of the Punjab. The history of this institution has been skilfully traced by Mr. Thornton in his minute, and the fact of its decay has been correctly stated. There is, however, no doubt that in past times the pancháyat, when properly controlled and treated, did give great assistance to officers new to the country, who were called upon to decide cases in which the law to be administered was obscure, and the expectations of the parties were but little understood. The Lieutenant-Governor is not satisfied that the venality of its members was the cause of its fall; His Honor is disposed rather to think that the people, when they grew accustomed to new laws and new procedure, did not retain their old love for the pancháyat, which knew too much of the facts in dispute, and usually based its decisions on compromise rather than on law. Courts of conciliation were no longer popular in the Punjab as soon as there were tribunals of another nature to which men could turn; and they are not likely to be successful again in the future, as they do not appear to the Lieutenant-Governor to be suited to the character of the people. A suitor does not wish to agree with his adversary, but to get the better of him, if he can; and all courts, therefore, need to have authority to decide cases, and not merely power to attempt to procure agreement between the parties. The Lieutenant-Governor would be glad to see rural courts with powers of this nature established in parts of the Punjab. His Honor would not, however, recommend the creation of a large number of such courts all at once over the whole Province; they should at first be created in districts where the necessity of increased judicial agency is most felt, and where men qualified by influence and character to sit as judges can be found, and afterwards the system can be extended elsewhere. There is much diversity in the opinions given regarding

the details of the working of these courts. The general idea is, that a bench of judges sitting together would decide well and faithfully many petty cases which are now brought of necessity into the regular courts, and with this view His Honor is disposed to agree. The Lieutenant-Governor considers that the agency adopted should be unpaid; that the plaints should bear the usual stamp; that the powers of the courts should be limited to suits of a value of Rs. 25; that the courts should not execute their own decrees, but should make them over for this purpose to the Munsiff or Tahsíldár having jurisdiction; and that there should be one appeal to the Judicial Assistant, or Deputy Commissioner. If it were found advisable to remunerate the judges, a grant of land revenue free would perhaps be found the best method of doing so. The benches could sit once a week or oftener, and if the system were found to answer, it might be extended gradually throughout the Province.

6. The Government of India is aware that very careful enquiries instituted in the Punjab have shown that the amount of land changing hands is small, and that the agricultural population are not generally much oppressed by debt. It has been pointed out, however, during the present discussion, by the Settlement Commissioner, Major Wace, and others, that the existing rules for the attachment of agricultural produce, in execution of decrees for debt, press hardly upon the agricultural debtor. This grievance, as far as the Lieutenant-Governor is aware, has not been prominently brought forward before; but there is no doubt that cases may have arisen in which the whole produce of the fields of a debtor has been seized in the execution of a decree, and he has been left to pay the Government revenue and to maintain himself and his family as best he could. In the Kapúrthala State, which is at present under the management of the British Government, certain rules have been drawn up which meet such contingencies as these justly and sufficiently. A copy of these rules is forwarded for the information of the Government of India. The Lieutenant-Governor considers that, in view of the position which the Government holds in regard to the land, it is reasonable to make provision for such matters, and he would not be unwilling to see rules enacted in the Punjab which should prescribe the times at which agricultural produce may be attached in execution of a decree against the agriculturist, the proportion of the crop which may be so attached, and the responsibility of the creditor who executes the decree for the Government land revenue demand due on account of the land on which the crop was grown.

Nos. 1212-13, dated Lahore, 2nd April 1879.

From—Lepel Griffin, Esquire, Secretary to Government, Punjab,

To—The Registrar, Chief Court, Punjab, and to the Secretary to Financial Commissioner, Punjab.

I am directed to forward herewith, for the favour of the opinion of the Judges / Financial Commissioner, copy of a letter No. 6-269, dated 6th ultimo, from the Secretary to the Government of India in the Home Department, together with copy of its enclosures, enquiring whether, (1) it is considered expedient in the Punjab to invest the courts of various grades with a summary jurisdiction in the interests of the agriculturists; and (2)* whether there are any tracts in this Province in which a system of adapting the land revenue to the variations of the season should be adopted on account of the scanty rain-fall.

2. In regard to this / the first, question, the Hon'ble the Lieutenant-Governor desires that your reply should contain all particulars necessary for the practical working of any scheme which may be proposed. His Honor would, therefore, like the following points noticed in your reply, and any others which may seem necessary:—

(1).—Constitution of Court: whether the Judge should sit singly or as a bench; qualifications of Judge.

(2).—Remuneration of Judges.

(3).—Limits, local and pecuniary, of jurisdiction, and classes of suits cognizable.

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* *Note.*—This question is for the Financial Commissioner only.

(4).—Order to be appealable or final, subject to review by court which passed it.

(5).—Should suitors be compelled to resort to local courts if their suits are cognizable in them, or should option of carrying them to higher courts of first instance be allowed?

(6).—Under what conditions of inspection should courts work?

(7).—How should decrees be enforced?

(8).—What fees should be levied on plaints?

3.* The Lieutenant-Governor will also be glad if the Financial Commissioner will obtain the opinions of some selected Settlement Officers regarding the second question of variable assessments. The question has been discussed on several occasions in some of the assessment reports.

Nos. 1214-15-16-17-18-19-20-21 and 22, dated Lahore, 2nd April 1879.

From—LEPEL GRIFFIN, Esquire, Secretary to Government, Punjab.

To—The Additional Commissioner, Jullundur Division, to the Commissioner and Superintendent, Jullundur Division, to the Settlement Commissioner, Mooltan and Derajat Divisions, to the Commissioner and Superintendent, Peshâwar Division, to the Extra Judicial Assistant, Gujránwála, to the Extra Judicial Assistant, Gujrát, to the Extra Assistant Settlement Officer, Mooltan, to the Honorary Assistant Commissioner, Mooltan, and to the President "Unjúmán-i-Punjab," Lahore.

I AM directed to forward herewith, for the favour of your opinion, copy of a letter No. 6-269F.C., dated 6th ultimo, from the Secretary to the Government of India in the Home Department, together with copy of its enclosures, enquiring whether it is considered expedient in the Punjab to invest the courts of various grades with a summary jurisdiction in the interests of the agriculturists.

2. In regard to this question, the Hon'ble the Lieutenant-Governor desires that your reply should contain all particulars necessary for the practical working of any scheme which may be proposed. His Honor would, therefore, like the following points noticed in your reply, and any others which may seem necessary:—

(1).—Constitution of court: whether the Judge should sit singly, or as a bench; qualifications of Judges.

(2).—Remuneration of Judges.

(3).—Limits, local and pecuniary, of jurisdiction, and classes of suits cognizable.

(4).—Order to be appealable or final, subject to review by court which passed it.

(5).—Should suitors be compelled to resort to local courts if their suits are cognizable in them, or should option of carrying them to higher courts of first instance be allowed?

(6).—Under what conditions of inspection should courts work?

(7).—How should decrees be enforced?

(8).—What fees should be levied on plaints?

No. 6-269 F. C., dated Fort William, the 6th March 1879.

From—C. BERNARD, Esquire, C.S.I., Officiating Secretary to the Government of India, Home Department.

To—The Secretary to Government, Punjab.

Despatches from the Secretary of State, Nos. 4 and 63, of the 26th December 1878. Letter to the Government of Bombay, No. 222, dated the 26th February 1879, and enclosure.

I AM directed to forward copy of the papers marginally noted, concerning the measures which are to be taken for the relief of ryots in parts of the Deccan, and to request that the Governor-General in Council may be informed whether His Honor the Lieutenant-Governor considers that it would be expedient in the Punjab to invest the courts of various grades with a summary jurisdiction; and where they possess such a jurisdiction, whether it should be extended; and if so, within what limits, and subject to what restrictions as to the subject-matter of the suits.

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* This paragraph is for the Financial Commissioner only.

2. The subject is one on which it would be desirable to obtain the opinions, not only of some of the ablest European judicial and revenue officers, but of intelligent Natives, official and non-official.

3. The Governor-General in Council would also wish to be informed whether, in the opinion of the Hon'ble the Lieutenant-Governor, there are any districts, or parts of districts, in the Punjab, in which the plan of an assessment of the land revenue, varying with the season to which reference is made in the 16th paragraph of my letter of the 26th ultimo, to the Government of Bombay, might be adopted with advantage.

P. S.—Copy of a suggestive article recently published in a vernacular newspaper of Northern India, touching the further utilization of the pancháyat system, is appended for information.

No. 63, dated London, 26th December 1878.

From—Her Majesty's Secretary of State for India,

To—His Excellency the Right Hon'ble the Governor-General of India in Council.

WITH reference to my telegraphic message* cited in the margin, I forward, for the consideration of Your Excellency in Council, copy of a despatch † which I have addressed to the Government of Bombay relative to a Bill which has been introduced into the Bombay Council for the relief of indebted agriculturists in certain parts of the Presidency of Bombay.

* *From Secretary of State, to Viceroy, 3rd December* 1878.
"Your Bombay Indebted Agriculturists Relief Bill. Await my despatch."

† No. 4, dated 26th December 1878.

2. I observe from the Proceedings of Your Lordship's Legislative Council of the 20th of June last, that Mr. Cockerell obtained leave on that day to introduce a Bill for the same purpose; but I am not aware that any such Bill has been drafted and introduced.

3. In my despatch to the Government of Bombay, I have expressed at length certain views which have presented themselves to my mind on a considertion of the report of the Commission appointed to enquire into the Deccan ryots, and I am desirious that Your Excelleacy in Council should consider these remarks in connection with further legislation on this important subject.

No. 4, dated London, 26th December 1878.

From—Her Majesty's Secretary of State for India,

To—His Excellency the Hon'ble the Governor in Council, Bombay.

I HAVE to acknowledge the receipt of the despatch from Your Excellency in Council, dated the 30th September last, No. 11, transmitting for my information copy of a "Bill for the Relief of Indebted Agiiculturists in certain parts of the Presidency of Bombay," which has been introduced into your Legislative Council.

2. On the 16th November I despatched to Your Excellency the following telegraphic message:—

"Delay proceeding with Indebted Agriculturists Bill. Despatch follows."

3. I now proceed to state the reasons which induce me to doubt whether the provisions in the measure before me are at all adequate for grappling with the evils which have been so prominently brought to light in the report of the Deccan Ryots Commission.

4. When that report arrived in this country in May 1876, Lord Salisbury was so deeply impressed with the distressing picture therein given of the agricultural population in the Deccan, that he awaited with great anxiety some communication from the Government of India as to the steps intended to be taken. But none such having arrived after an interval of nearly a year-and-a-half, His Lordship appointed a Select Committee of his Council to consider the report.

5. The Committee began to sit in November 1877, held several meetings, and examined some experienced witnesses well acquainted with the Bombay

Presidency; but before they had terminated their inquiries, a despatch was received from Your Excellency in Council in February of the present year, enclosing the draft of a Bill for the relief of Indebted Agriculturists in the Presidency of Bombay, and which you desired to have introduced into the Council of the Supreme Government.

6. That Bill contained three main principles:—

(1.)—That the courts should be obliged to enter into the merits of every money claim whether secured by bond or not, and should only award such sums, whether for principal or interest, as they deemed just, and should in no case give compound interest, or a larger amount of interest than the principal sum.

(2.)—That the principle of the Insolvent Act, as prevailing in the Presidency town, should be applied to the Deccan agriculturists.

(3.)—That land should not be sold in execution for debt, unless specially pledged in a bond duly registered.

Lord Salisbury, although not fully satisfied with all the principles contained in this measure, thought the occasion for attempting remedial legislation to be so urgent, that he sanctioned by telegram the introduction of the Bill, being quite willing that the experimental legislation contemplated in the Council of the Governor-General should be attempted. I also am of the same opinion.

7. Leave was accordingly given for the introduction of the Bill into the Council of the Governor-General on the 28th June last; but for reasons which have not been transmitted to me, the Government of India preferred, instead of one comprehensive Act, that your Government should pass a law dealing with some minor points relating to interest and to ancestral debts. The Bill which I have now before me is the result of the action of the Supreme Government.

8. I can well understand the difficulties which have deterred the Government of India from dealing with this subject as a whole, and which have induced them to leave minor points to be disposed of by the Local Government; but if the evils sought to be remedied are capable of being eradicated by legislation, I am clearly of opinion that they should not be dealt with piecemeal.

9. The very able report of the Commission, and the mass of valuable information contained in the appendices, enable us, I think, to draw the conclusion that some of the great causes which lie at the bottom of the poverty of the Deccan are wholly beyond the reach of the legislator, and are inherent in the national character and in the customs which have prevailed for countless generations. The Deccan ryots, like the general mass of the cultivating classes in other parts of India, are entirely without capital, and are driven on the first bad harvest into the hands of the money-lender, not only for the means to till their fields, but for food to keep themselves and their cattle alive till the crops of the next season are matured. This fact has created the system of borrowing at high interest, which prevails so largely amongst the agricultural population, and has made the existence of a money-lender in a Hindu village as essential as that of a ploughman.

10. The normal condition of a Hindu cultivator is much aggravated by local circumstances in parts of the Deccan. The soil is sterile, the climate is precarious, a good crop being in some parts obtained only once in three years; the fall of rain is scanty, the peasantry, though a sturdy and ordinarily a law-abiding people, are described as "utterly uneducated, and with a narrow range of intelligence." It is obvious that the causes mentioned in this and the preceding paragraph are not to be easily modified by any legislative Act.

11. The districts in which the riots took place came into British possession in 1819, and at that period, and for 20 years afterwards, divers causes, such as the ravages of Holkar's army and the dreadful famine which followed his campaign—a famine which was repeated two or three times during the first twenty years of the century—the subsequent heavy fall of prices, and the consequently oppressive weight of the old Mahratta rate of assessment which was at first continued by the Government of the day: all these had produced an amount of poverty and ruin which the settlement officer, writing in 1838, found it impossible to describe.

12. The Government of that day, however, made strenuous efforts to better this state of things. They reduced the assessment from an average rate of 13½ annas to 7 annas; they gave the cultivators for the first time fixity of tenure, and they abolished extra cesses.

13. A Resolution of the Government of Bombay, dated 30th August 1875, describes the satisfactory results of this new settlement of the land:—"In 1838 more than 50 per cent. of arable land was waste; in 1871 only 1 per cent. Population increased, during the term of the settlement, 39½ per cent.; agricultural cattle, 19 per cent.; ploughs, 22½ per cent.; carts, 270 per cent.; and wells, 40 per cent; Government land was unsaleable in 1838; during the last five years of the settlement, examination of the registration records showed that it fetched from 10 to 52 times its assessment. Thirty years ago there were no made roads, and communication was costly and difficult; the talúka is now traversed by the railway and by several excellent roads, and the increase in the number of carts indicates the extent to which the people avail themselves of the new facilities of communication with markets."

14. Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India), there is undeniable evidence in the report before me, that the very improvements introduced under our rule, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

15. The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure—marriage ceremonies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders competing for custom increased in most undue proportions. The first fall in prices, and the first bad harvest, both of which had occurred in these districts, found the cultivators as poor as ever, but encumbered with an additional mass of debt. Still no one would advocate, as an amendment of the law, that we should abolish fixity of tenure, or increase the assessment on the land.

16. Up to this point, then, I can see no opening on which the legislator can enter with effect. In all civilized societies there is a vast amount of suffering and destitution, very lamentable to contemplate, but which it is wholly out of the powers of the State, by any direct action, to eradicate. All that Government can do is to take care that its own institutions shall not aggravate the misery which so often follows the spontaneous action of the population.

17. This last observation brings me to the consideration of the Bill now before me. Your Government has distinctly perceived that the courts of justice we have instituted, and the law they administer, operate most harshly, and frequently with great injustice, on debtors, who form a great bulk of the population. Here, therefore, is an opportunity for the beneficial interference of Government. Both the Bills which I have alluded to above have been framed with the view of mitigating the law, and of extending the powers of Judges to modify the contracts entered into between man and man.

18. I may say at once, after full consideration, that the Bill introduced into Your Excellency's Council appears to me to be so dependent upon the character of the Judge, and so likely to be defeated by agreements between helpless debtors and wily creditors, that I cannot suppose it will lead to any substantial results.

19. The question then remains as to what shall be done, for it is clear that some alteration in the existing law is imperatively called for. A fitting measure can only be properly prepared in India. For the consideration of the two Governments, I proceed to notice the most salient points which have presented themselves to me on this head in the report and appendices of the Commissioners, and the lines of improvement which have suggested themselves. And I shall transmit a copy of this despatch to the Government of India, with the desire that they shall immediately apply themselves to the subject in a comprehensive manner.

20. Under Native Governments, it seems that no assistance was ordinarily afforded by the State to a creditor for the recovery of his debts. No court of justice was open to him, and he was left to his own devices to extort what was due, Government winking at very forcible measures that were occasionally employed. The result was not so bad as might have been expected. It speaks well for the national character that contracts were rarely repudiated. And the Commissioners observe that in these proceedings "honesty was the best policy for the ryot, and caution was a necessity to the money-lender."

21. On the establishment of our rule, however, courts of justice were established everywhere.

22. It is abundantly manifest to me, on the evidence collected by the Commissioners, that no evil has been so loudly, and I must say so justly, complained of by the people as the action of the courts. The extreme severity of the law on debtors has been pointed out by the report.

23. The Judges are only the instruments for enforcing the law as it is, and no blame is imputable to them. But the extracts from the statements of the Judges themselves, cited by Mr. Colvin, demonstrate completely that, irrespective of the hardness of the law, they are incapable of administering justice between debtor and creditor.

24. One Judge says—"the subordinate Judges in this district are much overworked and really have not time to investigate cases properly and to weigh the evidence;" another says—"our subordinate Judges are too hard-worked to allow, even if they were inclined to do so, of their going into the history of such cases. The court which was inclined to go into the old history of a case, would have nothing but the sowkar's books to go upon, if he produced them."

25. Another Judge enumerates the frauds perpetrated by the money-lenders, and states that they are practised with impunity. When "the deluded kúmbi * * is dragged into court, he is unable to answer the claims; or if he states a defence, he is not in a position to prove it."

26. The Commission also assign another reason for our courts being mere instruments in the hands of the money-lenders, namely, their great distance from the home of the debtor. A money-lender may easily instruct a pleader to take out process against a debtor in a court 40 or 50 miles distant at little cost to himself; but it is ruin for a cultivator, dependent on his daily labour, to absent himself for days together from his field, even if he has a valid defence.

27. Here then it is quite clear we have evils produced by the legislature itself, and which it is within the competence of Government to extirpate.

28. I am extremely unwilling at any time, but especially now, to suggest any increase to the cost of administration; but if it is made manifest that our courts of justice are inefficient in these special cases, and that our Judges admit they have not time to inquire into the real facts by a thorough investigation, I would suggest that, although an addition to the cost of administration is very much to be deprecated, it is imperative to remedy the defects here pointed out. A re-distribution of expenditure might be made, and I observe that it is stated in the Commissioners' report that 88 subordinate courts bring in a revenue of Rs. 16,80,744, and that the expenditure, including salaries of Judges, is only Rs. 6,90,717.

29. Evils, such as have been depicted above, arising out of the costliness and inaccessibility of courts of justice, though of a much slighter character, existed in England also, and the remedy suggested was the establishment of Small Cause Courts. This innovation, after having been opposed sturdily for many years, was finally adopted, and has proved so eminently successful, that nearly every year witnesses some extension of their powers. In India also the institution has been partially adopted. But it is from France that the most important evidence can be obtained as to the value of local courts. The agricultural population there is more akin than the English to that of India, inasmuch as French landed property is in the hands of innumerable petty owners, who cultivate with their own hands.

30. In that country small causes up to 100 francs are tried in every village before the Judge de Paix. The proceedings are summary, written pleadings are prohibited, and his decision is final on all sums not exceeding 50 francs. In the belief that a more detailed account of the proceedings of these courts, than is to be found in the Civil Code might be useful to the authorities in India, Sir Frederic Goldsmid was requested to obtain some information on his late official visit to Paris, and I herewith transmit to Your Excellency the note he has furnished. It will be observed that the early meeting of the parties before the Judge, in order to produce an amicable settlement of the suit, which is so strongly insisted upon by Mr. Bentham, is spoken of by the French authorities in the highest terms.

31. I cannot doubt that the existence of courts with summary jurisdiction and without appeal up to a limited amount, and possibly with the exclusion of professional pleaders; placed in localities within reach of the suitor's home, would tend to remove many of the evils which have been brought to notice.

32. I am quite aware of the difficulties which intervene to prevent the entrusting of large summary powers to Subordinate Judges, and that no portion of a Judge's functions requires more experience and self-control than the exercise of that large discretion over contracts which the High Courts inculcate as belonging to Indian Judges under the law. For this reason it is obvious that the summary jurisdiction to be attributed to Subordinate Judges should only extend to a very limited amount.

33. But I am inclined to think that the principle of summary jurisdiction without appeal might be conferred experimentally on all civil Judges in the Deccan with great benefit, and the limit to be fixed would of course vary with the rank of the Judge. If the District Judge could devote one day in the week to the disposal of small causes up to, say, Rs. 500, as was the practice formerly of the Supreme Court at Bombay, he would, in my opinion, confer infinite benefit on the community; he would afford an example to the courts below him of the manner in which such jurisdiction should be exercised; and he would personally derive the benefit which experience in this country proves to result from a Judge of Appeal being occasionally employed in trying original causes.

34. How far these suggestions can be made applicable to the portions of India to which the investigations of the Deccan Ryots Commission have extended, I leave it for the Supreme Government, in communication with Your Excellency in Council, to decide; but I am desirous that no time should be lost, and that a comprehensive measure should be at once proceeded with, founded on the principles which I have indicated, and on those which Lord Salisbury had previously sanctioned.

No. 1.

NOTE.

Des Justices de Paix en France.

Paris, le 18 December 1877.

Lest justices de paix out été institutes en France par la loi de 16-24 Août 1790.

Il y a un juge de paix par canton; il est assisté d'un greffier, et il lui est adjoint deux suppléants depuis la loi du 29 Ventóse, an IX. A Paris il y a autant de juges de paix que d'arrodissements; quelques grandes villes de France en out également plusieurs.

Therel are 20 "arrondissements," which from so many "cantons" of juges de paix *in Paris*. The average population is abont 90,000.—F J.G.

Nul ne peut étre juge de paix s'il n'est Français et ágé de trente ans au moins (Art. 209 de la Constitution de l'an III). Il est nommé comme tous les fonctionnaires publics, ainsi que les suppléants et le greffier, par Décret du Chef de l'Etat, et prête serment au tribunal de premiére instance. Aucun d'eux n'est immovible.

Average superficies market at 390.

Les juges de paix jouissent d'un traitement qui varie de 1,800 á 5,000; les fonctions des suppléants sont gratuites; aussi ces dernierssont il choisis parmi

officiers ministériels (notaires, avoués, maires, &c.). Quantaux greffiers, ils jouiss- d'un traitement fixe de 600 fr, á 2,400 fr. et touchent, en outre, des droits d'expédition pour les actes de leur ministére.

Les juges de paix ont une triple mission :—

1°. En *matière penale,* ils connaissent des contraventions de simple police (Code d'Instruction Criminelle, art. 137 et suivant) et prononcent des peines variant de 1 á 19 francs d'amende, et de un á cinq jours de prison (C. P., art. 461 et suivant). Ces jugements sont susceptibles d'appel lors qu'ils infligent une pénalité supérieure ácinq francs d'amende; l'appel est porté devant le tribunal correctionnel (Code d'Inst[on], Cr[lle], art. 172 et suivants).

2°. En *matiére civile,* ils statuent—

En dernier ressort, sur toutes actions personelles ou mobiliéres jusqu' á la valeur de 100 francs.

A charge d'appel devant le tribunal civil, sur toutes demandes, contestations, &c., excédant cette somme selon les distinctions de la loi du 29 Mai 1838, modifié le 2 Mai 1855.

3°. En *matière de concilation,* ils doivent s'efforcerd de mettre d'accord les parties en cause, de facon à prévenir le procès par un arrangement aimable dont ils dressent procès verbal.

Cette démarche est le préliminaire obligatoire de tout procès entre parties capables de transiger et hors le cas d'urgence ; toute demande en matière commerciale est réputée urgent,
et dispensée, par suite, du préliminaire de conciliation. (Code de Procédure Civil, art. 49.)

N. B.—The appointment of juge de paix, I am told, is held pending the pleasure of the governing authorities, and is in no way limited to a certain number of years.

F. J. GOLDSMID.

No. 2.

Hôtel de Louvre, Paris,
24th December 1877.

MY DEAR SIR ERSKINE FERRY,

THE authorities tell me they cannot give me a fair average of a rural canton, as they vary so considerably in extent, and a large extent may sometimes have but a small population; but a highly instructive and useful volume called "Statistique de la France",* of which the first volume has been lent me, shows that this country has superficies of 52,857,675 hectares, and that there were in 1872 no less than 2,857 "justices de paix" for a population of 36,102,921. This book, published by Guillaumin, 14, Rue Richelieu, in 1875, might, doubtless, be procured at Hachette's or Bailliére's, in London. In the meanwhile, I make an extract to the point :—

* Par Maurice Block.

" Le traitement des juges de paix, réglé par la loi du 21 Juin 1845, et par "lordonnance du 2 Novembre 1846, est le même que celui des juges de " tribunaux de premiere instance, dans les villes oú siégent ces tribunaux ; dans " les autres localités, il es ainsi réglé par lordonnance du, 2 Novembre 1846, et " par trois décrets, du 23 Août 1858, du 22 Septembre 1862, et du 12 Novembre " 1868 ; 3,000 fr. dans les cantons composant les arrondissements de St. Denis " et de Sceaux; 3,000 fr. dans les villes de 39,000 âmes et au-dessus (Roubaix, "Tourcaring); 2,700 fr. dans les villes de 20,000 âmes et au-dessus (Arles " Cette, Elbeuf, Le Creusot, et Meziéres, chef-lieu de département) ; 2,400 fr. dans "les chief-lieux d'arrondissement oú ne siége pas de tribunal de prémiére ins- "tance, et qui out moins de 20,000 âmes (Argelés, Bonnac, Commercy, la " Palisse, la Tour-du-Pin, Manléon, le Puget Théssiers, et Poligny, &c.) ;" *i.e.*, briefly, 2,100 francs for a minimum population of 3,000; 1,800 francs where less than 3,000 It appears, moreover, that 2,051 "juges de paix" belong to the last class, and 240 to the penultimate. Paris "juges de paix" (there are 20) have 3,000 francs, besides an office allowance of 1,500 francs=9,500 (380*l.*).

As regards the average size of a rural canton, I take the letter "A" in the Directory of Departments, &c., and strike an average of cantons coming under that letter.* I then find the average of hectares in 11 Departments (specified in margin). The result is that there are about 30 cantons in 1,560,000 acres (634,458 hectares). Each "juge de paix" would then have an extent of 52,000 acres.

	Cantons.		Cantons.
* Ain ...	having 36	Ardenes ...	having 31
Aisne ...	,, 37	Ariege ...	,, 20
Allier ...	,, 28	Aube ...	,, 26
Alpes Hautes	,, 24	Aude ...	,, 31
Klpes Basses	,, 30	Aveyron ...	,, 42
Ardeche ...	,, 31		

On again looking over Block's Book of Statistics, I find 91 Departments with—

363 arrondissements.
2,850 cantons.
37,386 communes.
38,067,094 population in 1872 (an average of 13,346 to the canton).
36,472,031 do. in 1866.

Believe me,
Very truly yours,
F. J. GOLDSMID.

P.S.—I make the hectare=$2\frac{1}{2}$ acres, less $\frac{1}{8}$th of a rood. The "Annuair" of the "Bureau des Longitudes" makes it 247,114,316 acres.

As regards "conciliation," it is considered here to work admirably. They have endless arguments in its favour; but their higher Judges have not the power of using it as ours in England (which my informant seemed to lament). It is the special privilege of the "juges de paix."

No. 118, dated Fort William, the 28th January 1879.
Endorsed by the Legislative Department.

TRANSFERRED, for disposal, to the Department of Revenue, Agriculture and Commerce.

No. 222, dated Fort William, 26th February 1879.

From—C. BERNARD, Esquire, C.S.I., Officiating Secretary to Government of India, Home Department.

To—The Secretary to the Government of Bombay.

I AM directed to communicate, for the information and guidance of His Excellency the Governor in Council, Bombay, the following observations and instructions on the subject of the despatch No. 4, under date the 26th December last, addressed by Her Majesty's Secretary of State to the Government of Bombay regarding the measures to be taken for the relief of the ryots in the Deccan with reference to the facts stated, and the opinion expressed in the report of the Deccan Ryots Commission.

2. The report in question was reviewed at length in your letter of the 6th April 1877, No. 2202, in which the subject was dealt with under three heads, namely—

(1) the nature and causes of the riots themselves;
(2) the defects in the revenue administration which may have contributed to cause the riots, and the remedies advisable; and
(3) the effect of the civil law and civil courts on the Deccan peasantry, and the measures advisable for altering the law or reforming the courts.

Under the first head the Bombay Government showed that the riots were confined to an arid tract of the central Deccan, comprising parts of the four districts of Poona, Satára, Ahmednagar and Sholápúr. There was comparatively little serious crime or violence. The hostility of the ryots towards their creditors, the

money-lenders, lay at the bottom of the disturbances. This feeling had been increasing in strength for some time. The peasantry are poor owing to the sterility of the soil and the extreme variableness of the seasons. They habitually contract debts beyond their means; most of them are said to be "steeped in debt." Since 1836 the ryots have been able to give a lien on their lands to their creditors, who consequently gained more and more power over the ryots. From 1850 to 1866 there was a period of great good fortune for the Deccan ryots. Railways and roads were made through the country; other public works constructed; money was spent largely; and the cycle of prosperous years culminated in the era of the American War, when Deccan cotton fetched three to six times its usual price, and the market price of other agricultural products rose enormously. But after the close of the American War a great fall of prices took place. During the period of plenty, the ryots had, many of them, paid off their debts; but they had contracted costly habits of life; and these habits they could not (or did not) suddenly discard. Thus the peasantry soon became involved in debt again. The money-lenders, most of whom belonged to an alien race whose home was in Rajputana, had little sympathy for the peasants. Civil courts had been multiplied, and their procedure had been rendered prompt. Creditors took their debtors into court, obtained decrees, sold up the ryots' land, and reduced the ryots to the position of serfs. Hatred towards the money-lenders became more bitter, discontent with the procedure of the courts was engendered, and in March 1875 the popular feeling found expression in attacks and outrages on village bankers. One feature of these outrages was that the account books and bonds found in the money-lenders' possession were destroyed by the rioters.

3. On the second head, the Bombay Government, differing from the opinion of two members of the Commission, considered that the recent revision of the land revenue assessment in the Deccan, the principles on which that revision was conducted, and the results of that revision, had no share in causing the riots of 1875, or in causing the depressed condition of the peasantry. The Bombay Government showed that before 1875 they had, in consequence of a great fall of prices, made considerable reductions in the land revenue demand recently imposed on parts of the four districts where the riots occurred; and they had laid down restrictions on future increases of the land revenue assessment. The Bombay Government saw no sufficient reason for acting on the Commission's recommendation, that large increases of the land revenue should be made leviable gradually, instead of being carried out, *per saltum*, in one year as at present. And they did not see their way either to the Government usefully taking the place of the village banker and lending-money to the ryots, or to any arrangement for altering the land revenue year by year according to the variations of the season. The Bombay Government concluded their review of this part of the subject by stating that the state of the ryots of the Deccan was most unsatisfactory; that one-third of the ryots were hopelessly involved and were little better than serfs, practically at the mercy of the bankers; and that ruin, if not arrested, would soon overtake the great body of the ryots.

4. Under the third head, namely the action of the civil law and of the civil courts, the Bombay Government grouped the difficulties of the ryot in three classes. Before a ryot was taken into court by his creditor, he was at a disadvantage by reason of his poverty, his ignorance, his extravagance, the load of ancestral debt which weighed upon him, the usurious interest charged, and the fraud occasionally practised by the money-lender, and also by reason of the shortness of the term of limitation which entailed the frequent renewal of bonds at usurious interest. When a ryot was taken into court by his creditor, he was at a disadvantage by reason of fraud practised by court subordinates in collusion with the creditor, whereby a summons was often returned as served, when the ryot knew nothing whatever about the suit or summons by reason of the *ex parte* decrees which followed upon such fraudulent returns to summonses; by reason of the distance of the courts, the long duration of contested suits, and the inability of the Judge to help the ryot to put his case properly; and by reason of the high cost of litigation. After a decree has been passed against a ryot he is under great difficulties, because he is liable to be imprisoned for debt; because his property of *all* kinds was (but is not now under the new Code of Civil Procedure) liable to forced sale; because his ancestral lands

are liable to a forced sale conducted under circumstances which (until the new Procedure Code was passed) were generally very disadvantageous to the ryot. For the purpose of relieving the ryot from some of these difficulties, the Governor in Council, proceeding on the recommendations contained in the report or Minutes of the Commission, proposed—

(*a*) that all bonds between ryots and money-lenders should be executed by notaries public;

(*b*) that the ryot should be entitled to receive from his banker a yearly statement of his account;

(*c*) that receipts for a ryot's payments should always be entered on the bonds;

(*d*) that ryots should have pass-books, wherein their dealings with their bankers should be entered;

(*e*) that the period of limitation for money bonds should be altered from three to twelve years;

(*f*) that civil judges should go more frequently on circuit;

(*g*) that the number of judges should be increased;

(*h*) that the High Court should instruct the subordinate courts to act up to the law which binds judges to weigh equitably the incidents to a disputed contract before it decrees full performance;

(*i*) that the High Court should take steps to keep the miscellaneous costs of litigation as low as possible;

(*j*) that Government should be enabled to advance money to insolvent ryots whose holdings were put up to auction by the civil courts, and should gradually recover the money through an agency for the management of such holdings.

The Governor in Council felt unable to support the recommendations of the Commission to the effect that—

(*k*) imprisonment for debt should be abolished;

(*l*) sales of land in execution of money decrees should be abolished.

5. With this letter from the Bombay Government was forwarded a Minute by the Hon'ble Mr. Rogers, a member of that Government, who advocated the abolition of imprisonment for debt, on the ground that the power to apply for execution against the person is seldom used by creditors, save as a means of extorting fresh and more usurious bonds from creditors.

6. Owing to the famine and other causes, the recommendations made by the Commission and by the local Government were not formally dealt with by the Government of India during the year 1877; but in the Code of Civil Procedure passed early in that year, before the receipt of your letter of the 6th April, but after the report of the Commission had reached the Government of India, certain provisions were introduced, the effect of which was to afford greater protection to the ryot as regards the sale of his land under decrees of court.

7. His Excellency Sir Richard Temple having in the meantime succeeded to the office of Governor, the Bombay Government took up the question again in their letter of 19th January 1878, No. 308. In this letter the Bombay Government stated that, although the evils on which the Commission had reported were less actively felt, still there was every reason to apprehend that they would sooner or later break out again. The Governor in Council admitted that the new Code of Civil Procedure (Act X of 1877) had improved the condition of the ryot; for his necessaries were now protected from sale; his lands, instead of being subjected to forced sale, might be placed under the management of revenue officers for the mutual advantage of his creditor and himself; he might protect himself from arrest by showing himself to be insolvent; and if his total debts did not exceed Rs. 200, he might, after his insolvency had been proved, be absolved by the court from all further liability. Nevertheless the Bombay Government held that some of the roots of the mischief on which the Commission had reported remained untouched. The Governor in Council

proposed early legislation on five separate matters, and forwarded a draft Bill to provide—

(1) that in money suits against ryots, the court should be compelled to go behind the bond into the facts and incidents of the transactions which led up to the bond;

(2) that in suits against ryots compound interest should not be decreed by the courts, and that simple interest in excess of the principal of a debt should not be allowed;

(3) that a ryot should not be bound to pay more than the principal of, and certain limited interest on, ancestral debts;

(4) that a ryot should be entitled at any time to claim the benefit of the insolvency law, without waiting (as the present law compels him to do) until he is arrested in execution of a decree; and

(5) that a ryot's lands should not be sold in execution of a money decree, unless they have been specifically pledged to the decree-holder by a registered bond.

8. The Bombay Government subsequently, in their letter of the 4th of the following month, adverting to the possibility that the Local Government might not be legally competent to legislate on such a matter, recommended that the necessary legislation should take place in the Council of the Governor-General.

9. The representations of the Bombay Government, of which the above is a summary, as well as the report of the Commission, received the most careful consideration from the Governor-General in Council, and on the 1st July 1878 the Government of India, in a letter from the Department of Revenue, Agriculture and Commerce, No. 404, stated the conclusions at which they had arrived. Fully recognizing the great importance of the matter, and accepting the view taken by the Government of Bombay, that a special remedy should be provided for the evils now weighing upon the ryots of the five districts embraced in the report of the Commission, the Government reviewed the five recommendations submitted by the Government of Bombay. Taking these recommendations in the order given above, the Government of India pointed out that Bombay Regulation V of 1827, as well as decisions of the High Courts of Calcutta and Bombay, certainly authorise, if they do not absolutely require, the courts to demand satisfactory proof that the consideration set out in a bond has really been received by the defendants. And the Governor-General in Council doubted the expediency of further legislation. In regard to the award of usurious interest, it was observed that the old Hindu law called *Damdupat* still obtains in the Deccan, and that under its provisions the creditor cannot, among Hindus, recover as interest a sum more than equal to the principal of a debt; but that, if the existing law on the subject was insufficient, the Bombay Legislature were competent to deal with the matter. In regard to the 3rd point, attention was invited to Act VII of 1860 of the Bombay Council, whereby the liability of a Hindu for his ancestor's debts is restricted. At the same time it was said that, if the provisions of that law did not give sufficient protection to ryots, the local Council would be competent to amend their own law on the matter. On the other points, namely, (4) a provision, exempting a ryot to claim the benefit of the Insolvent Court, and (5) a provision, exempting a ryot's land from sale save under a registered bond pledging the land in security for the debt, and requiring all bonds relating to land to be registered, a Bill was prepared for submission to the Governor-General's Council, and a draft of that Bill was forwarded to the Bombay Government for their opinion.

10. The Government of Bombay, in their letter of the 5th September 1878, No. 4579, accepted, subject to certain suggested modifications, the Bill which the Government of India proposed to introduce into the Council of the Governor-General in regard to points (4) and (5) described above. The Government of Bombay considered that the existing law and rulings of the High Court did not in practice suffice to protect the ryot from usurious compound interest, or from being unduly saddled with ancestral debts, and they remarked that the law, as it now exists on this point, applies only to particular classes of the community. His Excellency in Council expressed his readiness at once to

ct on the suggestion of the Government of India that a Bill to amend the law an the subject of points (2) and (3) above-mentioned should be laid before the oocal Legislature.

11. The Bombay Government again urged strongly that fresh legislation was needed to *require*, not merely to *enable*, the courts to go behind the bonds on which bankers sue ryots. They stated that at present it was not the practice of the civil courts of Bombay to require satisfactory proof that the consideration named in a bond had been actually received. They represented that any legislation in behalf of the Deccan ryots, which did not fulfil this requirement, would be a half measure, and must, therefore, be unsatisfactory. Further, the Local Government advised that the proposed legislation should provide for the establishment of local notaries public, as suggested by the Commission; and requested that power might be taken for extending the special legislation to other parts of the Bombay Presidency outside the four districts to which the inquiries of the Commission were mainly directed.

12. The Government of India, in replying to the foregoing representation in their letter of the 27th November 1878, adhered to the view that it was not expedient to legislate on point (1), in order to enable or to require, courts to go behind the bond. The Governor-General in Council held that the existing law enabled courts to do this, whenever the defendant contested the *boná fide* of a bond, and could support his objection. Any further legislation in that direction would practically be transferring to the plaintiff in suits for money due on a bond the burden of proof, which, according to the Evidence Act, lies upon the defendant. The Government of India were not prepared to assent to special legislation for the purpose of shifting the normal incidence of proof, as between the indebted agriculturist of the Deccan and those to whom his debts are due. The proposal to extend the insolvency clause of the Bill beyond Rs. 200 in the case of ancestral debts seemed to the Government of India unnecessary. As the Indian Registration Act provided sufficiently for the registration of deeds to which agriculturists were parties, and as the number of registration offices could be increased at the discretion of the Local Government, it was deemed undesirable to create a second system of registration officers, under notaries public, side by side with the registration offices under Act III. of 1877.

13. Shortly after this letter was sent to the Government of Bombay, the Government of India received a telegram from the Secretary of State desiring that the Bill referred to should not be proceeded with pending the receipt of a despatch from Her Majesty's Government. With that despatch, which bears date the 26th December last, the Government of India have been furnished with a copy of the despatch bearing the same date, No. 4, addressed to the Government of Bombay, in which the subject is fully reviewed, and the conclusions are stated at which the Secretary of State has arrived as to the objects that should be aimed at in the proposed legislation. It should be noted here that when this despatch was written, the Secretary of State was not in possession of the letters addressed by the Government of India to the Government of Bombay, under date the 1st July and the 27th November 1878. In regard to the procedure which is to be adopted, the Secretary of State has decided that the evils which it is sought to remedy, so far as they may be capable of being eradicated by legislation, should not be dealt with piecemeal, but should be provided for in a single comprehensive enactment. It follows, therefore, that the whole of the legislation must be comprised in one Bill to be passed in the Council of the Governor-General. One of the conclusions which Lord Cranbrook draws from the Report of the Commission is that—

some of the great causes which lie at the bottom of the poverty of the Deccan are wholly beyond the reach of the legislator, and are inherent in the national character and in the customs which have prevailed for countless generations.

The grounds of this conclusion are stated in the following paragraphs:—

(9.) The Deccan ryots, like the general mass of the cultivating classes in other parts of India, are entirely without capital, and are driven on the first bad harvest into the hands of the money-lender, not only for the means to till their fields, but for food to keep themselves and their cattle alive till the crops

of the next season are matured. This fact has created the system of borrowing at high interest which prevails so largely amongst the agricultural population, and has made the existence of a money-lender in a Hindu village, as essential as that of a ploughman.

(10.) The normal condition of a Hindu cultivator is much aggravated by local circumstance in parts of the Deccan. The soil is sterile, the climate is precarious, a good crop being in some parts obtained only once in three years, the fall of rain is scanty, the peasantry, though a sturdy and ordinarily a law-abiding people, are described as utterly uneducated and with a narrow range of intelligence. It is obvious that the causes mentioned in this and the preceding paragraph are not to be easily modified by any legislative Act.

(11.) The districts in which the riots took place came into British possession in 1819, and at that period, and for 20 years afterwards, divers causes, such as the ravages of Holkar's army and the dreadful famine which followed his campaign—a famine which was repeated two or three times during the first 20 years of the century—the subsequent heavy fall of prices and the consequently oppressive weight of the old Mahratta rate of assessment, which was at first continued by the Government of the day, all these had produced an amount of poverty and ruin which the Settlement Officer, writing in 1838, found it impossible to describe.

(12.) The Government of that day, however, made strenuous efforts to better this state of things. They reduced the assessment from an average rate of 13½ annas to 7 annas, they gave the cultivators for the first time fixity of tenure, and they abolished extra cesses.

(13.) A Resolution of the Government of Bombay, dated 30th August 1875, describes the satisfactory results of this new settlement of the land. In 1838 more than 50 per cent. of arable land was waste; in 1871 only one per cent. Population increased, during the term of the settlement, 39½ per cent.; agricultural cattle 19 per cent; ploughs 22½ per cent.; carts 270 per cent.; and wells 40 per cent. Government land was unsaleable in 1838; during the last five years of the settlement, examination of the registration records showed that it fetched from 10 to 52 times its assessment. Thirty years ago there were no made roads, and communication was costly and difficult; the talúka is now traversed by the railway and by several excellent roads, and the increase in the number of carts indicates the extent to which the people avail themselves of the new facilities of communication with markets.

(14.) Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India), there is undeniable evidence in the report before me, that the very improvements introduced under our rule, such as fixity, of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

(15.) The saleable value of the land greatly increase the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to extended cultivation, to more expensive modes of living, to larger outlay of the great stimulant to Hindu expenditure, marriage ceremonies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders competing for custom increased in most undue proportions. The first fall in prices, and the first bad harvests, both of which had occurred in these districts, found the cultivators as poor as ever but encumbered with an additional mass of debt. Still no one would advocate, as an amendment of the law, that we should abolish fixity of tenure or increase the assessment on the land.

(16.) Up to this point, then, I can see no opening on which the legislator can enter with effect. In all civilized societies there is a vast amount of suffering and destitution, very lamentable to contemplate, but which it is wholly out of the power of the State, by any direct action, to eradicate. All that Government can do is to take care that its own institutions shall not aggravate the misery which so often follows the spontaneous action of the population.

The Secretary of State then proceeds to state his opinion as to the nature of the remedies that should be applied. His conclusion is that these remedies mainly consist in the adoption of measures for mitigating the harshness with

which the courts of justice and the law operate on the debtors who form the great bulk of the population. He remarks that the civil judges are so few, and their courts are so distant from the homes of the ryots, that they are incapable of administering justice between debtor and creditor. And while reluctant to suggest, especially at the present time, any increase of the cost of administration, he deems it imperative that these defects should be remedied, either by a re-distribution or by an increase of expenditure. He remarks that the status of the agricultural population of India is much akin to that of France, and he suggests that it might be possible to establish, in the rural districts of India, and of the Deccan especially, tribunals similar to those of the *juge de paix* in France and in Switzerland. In each of the rural *departments* of France there is a *juge de paix* on a salary of £72 a year and upwards, with an average jurisdiction over 80 square miles and of 13,300 souls. His decision is final up to a limit variously stated at £2 and £4 sterling. In all cases, which are not urgent or do not involve questions of mercantile law, he is bound to confront the parties together, and to attempt to secure an amicable settlement between them, before he brings the case on his file for formal trial. Lord Cranbrook suggests that "the existence of courts with summary jurisdiction and without appeal up to a limited amount, and possibly with the exclusion of professional pleaders, placed within reach of the suitor's home, would tend to remove many of the evils which have been brought to notice." He admits that the circumstances of Indian societies require that only a very limited summary jurisdiction should be given to subordinate judges, more especially in the exercise of discretion as to the enforcement of the terms of written contracts. But he suggests that "summary jurisdiction without appeal might experimentally be conferred on all civil judges in the Deccan with great benefit," and he adds that "the limit to be fixed would of course vary with the rank of the judge." His decision is that a comprehensive Bill for relieving the Deccan agriculturists should be framed, as soon as possible, on the principles set forth in the despatch, and also on those which Lord Salisbury had previously sanctioned.

14. The Governor-General in Council has very carefully considered the observations and instructions contained in the Secretary of State's despatch. The suggestion that the number of courts of justice in the interior should be increased, and that all judges should be invested with a final jurisdiction in petty cases, points to a very considerable change in the procedure of our civil courts. The propriety of limiting the right of appeal in petty civil cases has been discussed in India for many years past. At present the decisions of Courts of Small Causes are practically final up to a limit of Rs. 500, in what are known as cases of the Small Cause Court type. In Madras the decision of a village headman is final in suits for personal property up to Rs. 10, and if the parties consent, he can determine similar suits up to Rs. 100 in value, with or without the assistance of a pancháyat (local jury). The regulations under which these village courts exist, set but that powers were given to village courts, among other reasons, in order "to diminish the expense of litigation in petty suits, and to promote the speedy adjustment of such suits without subjecting people to the inconvenience attending a long absence from their homes." The returns of 1877 show 44,163 suits decided by village headmen out of a total of 196,343 suits decided by all courts in the Presidency. The District Munsifs in the Madras Presidency are invested under a local Act (No. IV. of 1863) with a final jurisdiction "in suits of a nature cognizable by a Court of Small Causes when the debt, damage or demand, does not exceed in amount or value the sum of fifty rupees." It has been on occasions held by authorities conversant with Indian life, that the people greatly value the privilege of appeal. Very recently in Bengal, when a scheme for improving the courts in the interior of the country was, after long discussion, submitted to the home authorities, it was decided that final appellate jurisdiction could be only given to benches of two Judges (one European and one Native) up to a limit of Rs. 200 in value. And it was held that the majority of suitors would not be satisfied with any final appellate jurisdiction short of the High Court in suits of higher value, until the new appellate benches to be established in the interior gained for themselves the confidence of the people.

15. It is desirable that these facts and these considerations should be kept in view in framing a scheme for remodelling the system of judicature in the districts to which the correspondence reviewed in this letter has reference; but the Governor-General in Council readily admits that the circumstaces which have occurred are such as to justify the experimental legislation which has been sketched out in the despatch of the Secretary of State. It will be for the Government of Bombay to consider how far it will be expedient to give jurisdiction in petty suits to the headmen of villages, to what extent and at what cost to the Provincial revenues the existing judicatories require to be increased, and how far a summary jurisdiction, not open to appeal, should be conferred on each grade of judicatory. The Bill will deal, not only with the civil courts, but with the other points for which it was intended to provide in the Bill which the Honourable Mr. Cockerell obtained leave to introduce into the Council of the Governor-General in June last, and in the Bill which was to have been passed in the Council of the Governor of Bombay under the authority conveyed in the letters from the Department of Revenue, Agriculture and Commerce of the 1st July and 26th November 1878. In order that no avoidable delay may occur in carrying out this measure, the Governor-General in Council has resolved to entrust the duty of preparing the draft of a Bill for the purpose of giving effect to it, to the Honourable T. C. Hope, C.S.I., who will be instructed to perform this duty in communication with the Government of Bombay and with the Home, Revenue, and Legislative Departments of the Government of India. Each Department will be instructed promptly to furnish Mr. Hope with all papers he may require, and with such assistance as may be necessary for preparing a Bill for submission to the Council to the Governor-General for making Laws and Regulations. Mr. Hope will visit Bombay to consult with His Excellency the Governor in Council on the details of the Bill, as soon as he is prepared to do so.

16. There is one point, however, which, although it may possibly not involve legislation, appears to the Governor-General in Council to demand further consideration from the Bombay Government, *viz.*, the possibility of adapting the assessment of the land revenue to the variations in the season. This question is discussed in paragraph 10 of the Bombay Government letter of the 6th April 1877. The Governor-General in Council fully agrees in the view that, in ordinary cases, and where the land revenue is moderate, it would not be good either for the ryots or for the public treasury, that the land reveuue demand should fluctuate. But the system, which is best for districts enjoying an ordinarily regular rain-fall, may not be the best for the arid tract of the Central Deccan, were it is said that a good rain-fall comes only once in three years. In view of the very great fall of prices, and the vicissitudes of season in the Deccan during the last few years, it would be desirable that the present Government of Bombay should consider whether the recent (1873-75) revisions of the revenue have given sufficient relief from an assessment which was based in part on an unduly high estimate of the normal value of field produce in the Deccan. And, further, the Governor-General in Council would wish the Government of Bombay to consider whether in these four districts, or in parts of them, it would not be wise to have a varying scale of revenue demand to be applied in unfavourable seasons, whereby the normal assessment might be reduced by a certain percentage over an entire district, or division of a district, in the event of a failure of rain or other cause of serious damage to the crops.

No. 977, dated Allahabad, the 8th November 1878.

From—C. ROBERTSON, Esquire, Secy. to the Govt. of the North-Western Provinces and Oudh,

To—The Officiating Secretary to the Government of India, Home Department.

IN reply to your letter No. 1958, dated 22nd October last, I am directed to forward herewith a full translation of the article on the revival of village *pancháyats* which appeared in the *Akhbar-i-Anjuman-i-Punjab* of the 27th September last.

THE REVIVAL OF VILLAGE PANCHAYATS.

[Translation of an article from *Akhbar-i-Anjuman-i-Punjab*, dated the 27th September 1878.]

SYAD AHMED KHAN, Bahádur, C.S.I., Editor of the *Aligarh Institute Gazette*, has published a leader in his paper of the 7th September, page 29-0, refuting the argument of a Native of the Punjab for the revival of the village

pancháyat. The Syad says that the *pancháyat* is an oppressive institution of the dark ages, quite unsuited to the present state of civilization, science and art. He is unquestionably an educated and enlightened gentleman, but his love of Western civilization has prodced in him a strong dislike for everything native, whether it be native ideas, associations, arts or manufactures. He seems to forget, that the very same Western enlightenment, which has so much influenced him, is advocating the revival of such useful institutions. As his eloquence has reached the Legislative Council, and secured for him a seat there, he has given his opinion beforehand, so that it might be taken as that of the educated native community and have weight in the Council.

We beg to refer the Syad to Section 6 of Act X of the Civil Procedure Code for 1877, Madras. The village *pancháyats* and munsifs have been established all through the Madras Presidency agreeably to this Act. We beg to ask him whether they are doing real good to the country, whether they are composed of the enlightened Europeans, and whether Madras is a portion of India? When they are doing their work satisfactorily in the Madras Presidency, there seems to be no *primâ facie* reason why the institution should not succeed in other parts of the country. We don't think that the village munsifs and the members of *pancháyats* in Madras are all well educated men and thoroughly ac-acquainted with all the laws and regulations in force in the country; but it is not essential that they should have such an elaborate training. They may be intelligent and clever men, and such can easily be found in every part of the country. Some simple rules and regulations can with ease be framed for their guidance. But the technicalities of the law are quite different things from justice. The *pancháyat* can very fairly decide the cases of its own village, as it fully knows the particulars. Syad Ahmed Khan remarks that, although the law recognizes the decisions of *pancháyats* as legal, the people hardly resort to them for the settlement of their disputes. The cause of this is that, in the present times of freedom and liberty, when even children do not obey their parents, the village headmen have no authority and influence over the inhabitants of the village. On the contrary, they are themselves afraid of *badmáshes*. They hear false evidences given in the courts, but cannot breathe a word. If their authority were restored, the *badmáshes* would fear them, and the people would refer their disputes and private quarrels to them for decision. On account of their having no legal authority at present, they are not held in honour by the people.

Syad Ahmed Khan has served as Judge for a long time. We beg to ask him how many intricate cases he has referred to private *pancháyats* and commissions every year for decision. If the working of the civil courts of a Presidency were well considered, more than one-fourth of all the cases decided might be referred to *pancháyats* for final decision. One would have many occasions to admire the penetration of such *pancháyats* in intricate cases. We ask Syad Ahmed Khan whether the following kind of cases would not be better disposed of by a village *pancháyat* than by a court of justice—

(1)—In a village which is situated 25 miles from the nearest court of justice, A's cattle injure B's crops. Now B has to seize the cattle and take them to the nearest police station, which is, say ten miles distant from the village. He then goes to the court, which is 25 miles distant from his house, to sue for damages, pays the court fee and the expenses of the witnesses and his work also suffers during his absence from home. It spite of all this trouble and expense, he may not be able to produce sufficient evidence for the conviction of the accused, and therefore, the accused may be acquitted by the court.

(2)—In the same village a quarrel takes place between A and B, and A slightly hurts B. B goes to the court, which is 25 miles from the village, and submits a plaint, charging A with causing simple hurt. Four or five witnesses, both for the prosecution and defence, are then summoned to the court. Their dispute is ultimately settled by private compromise. Thus they are unnecessarily put to a great deal of trouble and expense, which would be avoided if there were a legally constituted *pancháyat* in the village.

(3)—In the same village A borrows Rs. 2 from B, and afterwards does not repay the amount to the creditor. B applies to the court for the recovery of his money, and the debtor and the creditor are each put to an expense of Rs. 5 before the latter obtains a decree for the amount against the former.

(4)—In the same village A holds a decree for Rs. 2 against B, and applies to the court for the execution of the decree. But before the decree is executed and B's property attached, B pays the amount of the decree to A. A, the decree-holder, must then go to the court to certify to the fact of the payment. Suppose he is unable to walk 25 miles, he will have to hire a carriage. If there were a village *panchayat*, he might certify the payment to it.

We do not mean that every caste, such as barbers, potters, kahárs, &c., should have their different *panchayats*. In every large village or town a *panchayat* should be established, consisting of two, three, five or more respectable and influential persons of the village or town. When there are three or four small villages at a short distance from one another, a *panchayat* should be established in one of those villages, and its jurisdiction should extend over all of them. A few simple and short rules should be prescribed for the guidance of such *panchayats*. They might be entrusted with powers to hear and decide the following kinds of cases:—

(1)—Suits for damages for injury done to crops, trees, &c., provided the damages do not exceed Rs. 20;

(2)—Suits for the recovery of debts up to Rs. 20;

(3)—Disputes connected with marriage or caste matters;

(4)—Disputes arising from the closing of thoroughfares;

(5)—Cases of causing slight hurt;

(6)—Cases of abusive language; and

(7)—Offences against sanitary rules.

In all cases, the plaints submitted to the *panchayat* might be on plain paper, and copies of judgments might also be granted by it on plain paper to the contending parties. If any party is dissatisfied with its decision, he might appeal to the regular court of justice within one month after the date of the judgment delivered by the *panchayat*, otherwise the decision of the *panchayat* would be considered final and taken as that of a legally constituted court. In cases of marriage, relations and caste disputes, the *panchayat* would have simply to ascertain whether the party made outcaste is really guilty. If the wronged party has a valid claim for damages thus sustained, he might then be authorized to file his regular suit in the civil court, if it be beyond the *panchayat's* power to decide. The *panchayat* might also be entrusted with the duties of village marriage registrar. In every civil suit in which the value of the claim is above one rupee, the *panchayat* should levy a fee of eight annas from the party who loses the case. When a court executes a decree for money against the judgment-debtor, and the judgment-debtor pays the amount of decree to the decree-holder, the decree-holder should certify the payment to the village *panchayat*. In criminal cases the *panchayat* might fine up to rupees five. It might be also entrusted with the duty of exercising a check over the village *badmáshes*.

If such village *panchayats* be established all over the country by the Government, the people will be spared a great deal of inconvenience and expense, and the courts will be greatly relieved from much miscellaneous work, and from the trouble of deciding numerous petty cases.

The Local Government might be authorized to increase the power of such *panchayats* whose working is found quite satisfactory, and to decrease the powers of others where the working proves irregular and unsatisfactory in any way.

By the constitution of such *panchayats*, the influence of the village headmen will be legally established, the *badmáshes* will be kept from mischief, petty disputes and quarrels will be amicably and fairly settled, and courts will not be overworked with petty cases, as is the case at present.

No. 3187, dated Lahore, 27th November 1879.

From—G. W. Rivaz, Esquire, Registrar, Chief Court, Punjab,
To—The Secretary to Government, Punjab.

No. 1212, dated 2nd April 1879.
No. 2741, dated 28th July 1879.

With reference to your letters noted in the margin, I am directed to submit copies of the minutes recorded by the Judges on the subject of investing Courts in the Punjab with summary jurisdiction in the interest of agriculturists.

Note by C. R. Lindsay, Esquire, Judge.

Subject:

The expediency of investing Courts of various grades with summary jurisdiction in the interests of agriculturists.

With regard to the subject-matter in question, His Honor the Lieutenant-Governor of the Punjab places before this court the following questions, which he requests may be noticed in suggesting any practical scheme in the interest of agriculturists :—

1. Constitution of the court, whether the Judge should sit singly, or whether there should be a bench of Judges, the qualification of the Judge or Judges ?
2. The remuneration of the Judge or Judges ?
3. The limits of the court's jurisdiction, local and pecuniary, and the classes of suits cognizable ?
4. Should the court's orders be appealable or final ? Should it have the power of review ?
5. Should suitors be compelled to resort to local courts if their suits are cognizable in them, or should option be given of lodging such suits in higher courts of first instance ?
6. Under what conditions of inspection should the local courts work ?
7. How should decrees be enforced ?
8. What fees should be levied ?

The question put by the Officiating Secretary to the Government of India to the Secretary to the Government of the Punjab, in his letter No. 6,269, dated 6th March 1879, is simply this : whether His Honor considers it would be expedient to invest the courts of various grades with a summary jurisdiction, and when they possess such a jurisdiction, whether it should be extended, and if so, within what limits and subject to what restrictions as to the subject-matter of the suits.

In other words, is it expedient that all Judges of various grades be invested with a final jurisdiction in petty cases ? that the right of appeal in such cases should be abolished ?

The questions put by His Honor the Lieutenant-Governor raise the presumption that it may be expedient to establish other courts of a lower grade than the existing courts—that is, village courts, to which suitors could go for the speedy adjustment of their suits without being subjected to the inconvenience attending a long absence from their home.

The correspondence has given rise to the view that the re-establishment of village *panchayats* is favoured by the Government of India.

I think this view is erroneous.

The question raised, and on which a reply is required by the Government of India, is whether final jurisdiction in petty suits may, with advantage, be conferred on existing courts of various grades.

As I may be wrong, I give my opinion as to *panchayats* and village courts. I have had the advantage of reading Mr. Thornton's reply to the Government of the Punjab.

I entirely concur with him that to establish *panchayats* with final jurisdiction, or subject to revision by a competent court, would be a retrograde step. He has clearly shown that both systems have been tried, and they have signally failed.

I have not the experience he has as regards the rural population of the Punjab, but after ten years' work in this court, and many years' work as a District Officer, Judge, and Commissioner in the North-Western Provinces, I have no hesitation in saying that a return to any system of *panchayats* would be very unpopular, and not to the advantage of agriculturists or others.

I now consider the question of village courts so placed as to be easily accessible.

In point of fact we have these courts in the Punjab. Munsiffs have lately been appointed, and it is especially their duty to entertain and dispose of petty suits.

It may be that the Munsiffs' courts are too far apart, that they are not easily accessible. If this be the case, an increase to these courts is the proper remedy.

Mr. Thornton, who has worked out the average distance of courts from suitors, shows that, on an average, the distance a suitor has to go for redress is 7 miles.

This may be the distance as worked out on paper, but I think the fact may be that Munsiffs' courts are too far apart for the agricultural community,—that is, an agriculturist is unable to go to, and return from, such court in one day, and I think, under ordinary circumstances, he should have it in his power to obtain redress without a longer absence than one day from his occupation. Otherwise, these courts, on the whole, give satisfaction ; they are strictly supervised, and they do their work quickly.

Native gentlemen have urged to me the expediency of a still lower grade of courts. I have been told that land-owners and others should be invested with authority to try and dispose of, singly or as a bench, petty criminal cases and petty suits ; that their jurisdiction should extend over a cluster of villages, and complainants and suitors be compelled in the first instance to resort to such courts ; that if dissatisfied with the decision of the court, suitors should have it in their power, within a prescribed time, to lodge their suit in a court where such suits are ordinarily lodged, otherwise the village court's order should be final, and effect given to it as a decree of court ; and as regards petty criminal cases, that such courts should have the power of inflicting a small fine, from which an appeal could be lodged in the court of the Tahsíldár or Magistrate. I append the opinion of Rai Amín Chand, Judicial Assistant, Ajmere, recorded at my request.

I am unable to support his views, and therefore I do not take up in detail the questions he has discussed, which are substantially the questions put by His Honor the Lieutenant-Governor. It would be difficult to supervise satisfactorily these petty village courts, and it would be very difficult to find suitable men to act as Judges.

We have now Honorary Civil Judges and Honorary Magistrates ; their work is certainly as good as the work of petty village courts would be, and if it be necessary, such Judges and Magistrates may be increased.

An increase, if it be necessary, of Honorary Civil Judges and Honorary Magistrates, is preferable to the establishment of petty village courts, over which it would be next to impossible to exercise proper control.

I now come to the question put by the Officiating Secretary to the Government of India.

I have no hesitation in saying that all Courts should not have summary jurisdiction ; in other words, that their order in certain cases should not be final. The right of appeal is a right that should not be curtailed. All classes would deplore the loss.

The system of appeal that now obtains in the Province works satisfactorily, and it would be matter for deep regret, and it would be very detrimental, if the right were curtailed.

I agree that Small Cause Courts are good when the Judges are picked men, honest and thoroughly up to their work, and it is only to such men presumably that final authority is given.

It would be a crying evil if such authority were given to men ordinarily appointed as Judges in civil suits. No one who has had a large experience of the working of such courts would advocate the system. Were Judges of first instance picked men, thoroughly able to sift the facts and apply the law, the extension to them of final authority in certain cases might be beneficial. As matters stand, it would be prejudicial to the interests of all suitors.

It must be borne in mind that, so far as this court is concerned, no case comes before a bench till it has been examined by a Judge of the Court, and consequently only those cases that show good ground for a first, second, or further appeal, come before the Judges, otherwise the petitions are rejected in chambers.

And so with the subordinate appellate courts, they have authority to reject the appeal without summoning the respondent, if on the face of the appeal, and after hearing the appellant or his counsel, no sufficient grounds for appeal are manifest.

It is my opinion that no change in the law of appeal, or in the constitution of courts, is at present required in this Province.

If it be shown to be necessary, let there be an increase of Honorary Judges, Honorary Magistrates and Munsiffs, and let the courts of Munsiffs be so located as to be ordinarily within a day's journey of every man's residence, and let the Government and the court be very careful in the selection of men to be such Judges, Magistrates and Munsiffs. If this course be followed, I feel sure that fair justice will be obtainable by, and given to, the agriculturists and others of the Province.

P.S.—Since the above was written, I have perused letter No. 16-1136 of the 30th September 1879, from the Under-Secretary to the Government of India, Home, Revenue and Agricultural Department, to the Secretary to the Government of the Punjab, enclosing—

Despatch to Secretary of State, No. 5, dated 20th January 1879.

Despatch from Secretary of State, No. 13, dated 17th July 1879, on the subject of the law of appeal and the finality of certain judgments.

In my opinion no change in the law as it exists in the Punjab is necessary. I have in my note on the expediency of investing courts of various grades with summary jurisdiction, stated that I am totally opposed to any further extension of the finality of judgments. It is a great mistake to curtail the right of appeal. To give a graduate small cause jurisdiction to every judicial officer, from the District Judge downwards, would not be beneficial, nor is it necessary in the Province.

Translation of answers by RAI AMIN CHAND, Judicial Assistant, Ajmere, to questions put by C. R. LINDSAY, Esquire, Judge, Chief Court, Punjab, regarding the establishment of *Panchayats* in villages.

Answer 1.—It will be a petty court (to be entitled "the village Judge" or "the village Magistrate"), and will, after the fashion of the country, be called a *dési panchayat.*

It will consist of three or four persons, of whom, if practicable, one or two shall be able to read and write. The *ála lambardár* of the village shall necessarily be a member of the *panchayat*, the other members being elected from among men of influence, good conduct, and distinction.

The following classes of civil suits will be cognizable by the *panchayat*:—

Suits for damage to standing crops, fences, grass, trees, cattle and irrigation.

Suits for parole debts, book debts, and debts on bonds.

Suits for damages caused by breach of betrothal contracts, excommunication from caste, and closing of passage;

Suits by *Lagis* of all sorts for distribution of their income.

Suits for wages of service, hereditary or temporary, by such persons as potters, carpenters, blacksmiths, shoemakers, &c.

Suits for wages between masters and servants and for wages of handicrafts.

A written order pointing out the period of limitation for each class of suits which the *panchayat* may be empowered to hear, will have to be given to the members of *panchayats*, so that they may not admit cases contrary to the Limitation Law.

The criminal cases cognizable by the *panchayat* will be of the following classes:—

Section 290, Indian Penal Code, Public nuisance; Section 325, Indian Penal Code, assault or criminal force *i.e.*, calling bad names or slight beating;

Section 425, mischief of the following classes to the extent of Rs. 5 in value, namely—to cultivation, flowers, fruit, culinary vegetables, wood or grass; or by closing a water channel, or taking water by interrupting it.

Clause 5, Section 34, Act V of 1861, heaping filth on public roads, *i.e.*, breaches against conservancy.

In cases for mischief, where property has as a fact been damaged, the *panchayat* may award compensation, to the extent of Rs. 5, to the complainant, and may fine the accused to the same extent.

Answer 2.—The *panchayats* will consist of honorary members, and not of paid ones. They will be proud of the distinction thus conferred on them by the Government. For since the time that the *panchayats* lost their authoritative element, the influence of such men of position has diminished to such an extent, that even a sweeper would not obey them if they were to direct him to keep a public place clean.

Seeing hundreds of vices rife in the villages, they can nevertheless, for want of authoritative functions to be exercised, put no check on them; so that the condition of villages is daily degenerating in this respect. The establishment of the *panchayats* will remove all the evils now generated, and their influence will secure order to the village. Proud of the honour conferred upon them by Government, and prompted by a desire of being respected, the members of the *panchayats* will act honourably, and will be thankful to Government, for it will keep up their respectability and secure them access to the authorities.

Answer 3.—The jurisdiction of the *panchayats* will extend to the territorial limits of the village, town or circle of villages, wherein they may be invested with judicial powers, and they will hear only such cases in which the defendants reside or are present within their jurisdiction.

In the law to be enacted regarding such *panchayats*, the Local Government will have to be empowered to invest the *panchayats* with the power of summary trial of civil cases to the value of Rs. 20, and in criminal cases to inflict fine only, not exceeding Rs. 5, or less.

The Local Government should also be empowered to frame, from time to time, rules as may be thought desirable regarding the hearing of cases by the whole *panchayat* or by single members, execution of the work disposed of by the *panchayats*, attendance of the parties, keeping up of registers of summary proceedings and public safety, and inspection of the work performed by the *panchayats*.

Answer 4.—The decision of the *panchayat* will not be subject to appeal or revision. But such principles may be laid down for the administration of justice, as may prevent injustice being done in any way.

For instance, when a suit be brought before a *panchayat*, the *panchayat* should enter the case in its register, noting therein the serial number of the case, the date of its institution, the names of the parties, amount and nature of the claim, and abstract of the order as to whether a decree is passed, and for how much, or the claim is dsmissed, and the date of the order.

It will have to be provided in the law to be enacted on the subject, that as soon as a *panchayat* should decide a case, it should furnish the parties with copies of its order, so that any party dissatisfied with the *panchayat's* decision may bring, within one month, a regular suit in the court by bearing the usual costs.

The execution of the decree will, of course, not take place till the expiration of that period, after which the decision will have the force of a decree of the court, the parties being understood to have consented to the award of the *panchayat*, provided the decision be not opposed to any law in force.

Such a procedure as this would obviate all danger of injustice, for the *panchayats* would generally be anxious to decide, as far as possible, to the satisfaction of both parties, knowing that in case of dissatisfaction the parties would be at liberty to bring a regular suit.

Very probably 95 cases out of every 100 will, under such a procedure, end in a compromise between the parties, and in five cases alone a regular suit will have to be brought, and in those five, too, the grounds on which the *panchayat* may have decided the case would be of great service to the court.

In criminal cases, too, the *panchayat* would keep up a summary register similar to the civil cases, but in the former the decision of the *panchayat* shall not be final. An appeal shall lie from the *panchayat's* order to the tahsíldár, who, on an appeal to him, will inquire verbally or in writing from the *panchayat* its grounds for the decision, and will then pass a decision on his own grounds, reversing or confirming the *panchayat's* orders.

Answer 5.—In cases cognizable by the *panchayat*, the suitors shall have to to bring the case first in the lowest court, *viz.*, the *panchayat's ;* and they will have to comply with the law enacted for the guidance and procedure of the *panchayats*. In the absence of such a compulsory provision, the wily men in villages, knowing that, as the members of the *panchayats* are acquainted with the real facts their wiles would not succeed, would always take their cases and the cases of their friends and relations direct to the court.

As the *panchayat* rules would provide an excellent procedure for the administration of justice, it would be essential to maintain the influence of the *panchayats* that the cases falling within their jurisdiction be tried by them in the first instance.

Answer 6.—The *panchayat* will not exercise any powers from which a fear of injustice may be apprehended. Yet the general control and supervision to be exercised on its proceedings by Tahsíldárs and Deputy Commissioners will be restricted to seeing whether the registers are properly kept, and whether the *panchayat* observes the procedure prescribed for it. Any errors of procedure that may be discovered will also be pointed out to it from time to time, with a view to prevent a recurrence of them in future.

Answer 7.—Cases decided by the *panchayat* will frequently be settled by a *rázínámáh*, and the sum decreed will ordinarily be paid up in such cases. If, however, the amount of any such decree be not paid, the decree-holder will first present his petition with a copy of the *panchayat's* decision to the *panchayat*, and the *punch* will try and induce the defendant to pay up the money ; if the latter still does not pay, the *punch* will write an endorsement on the petition, to the effect that the defendant was duly warned but would not pay, and then he will return the petition to the decree-holder with a view to its being laid before the tahsíldár for execution.

In such case the decree-holder will affix the proper stamp on the petition, and present it at the tahsíl.

The tahsíldár will then satisfy himself on two points,—1*st*, whether the case was settled by the *panchayat* ; and 2*ndly*, that the decision is not barred by the law of limitation, and is not opposed to the provisions of any other law in force. If there be no doubt on these points, the decision will be executed in the same manner as decrees passed in the tahsíl court. If the decision appears to be opposed to the provisions of any law in force, the tahsíldár will record his opinion and submit the case to the Deputy Commissioner.

If the Deputy Commissioner concurs with the tahsíldár, the decree-holder and the *panchayat* will be informed that the decision was illegal, and therefore incapable of execution. An order of this nature must be considered a summary order of the Deputy Commissioner, and if the decree-holder considers himself aggrieved thereby, he shall be at liberty to institute a regular suit.

In criminal cases, if the accused pay his fine to the *panchayat*, the money will be transmitted to the tahsíldár with a copy of the *panchayat's* order, and the tahsíldár will furnish a receipt for the same. If the accused does not pay the fine, the *panchayat* will forward to the tahsíldár a copy of its order, and the tahsíldár will cause the fine to be realized in the same manner as fines imposed by himself: provided that a period of one month has elapsed from the date of the *panchayat's* decision, and no appeal has been preferred within that time, or provided an appeal has been rejected.

Answer 8.—All cases, civil and criminal, will be instituted before the *panchayat* in a summary manner on plain paper. The advantage resulting from this is, that the courts will be relieved of a very large proportion of work, and people will have justice done to them without any trouble; and as the system will not entail any expense on Government, the people will be freed from the costs, and especially from the fees of pleaders and mukhtárs, which exceed even the costs of the court itself. Cases will be decided in accordance with justice, and other means of obtaining relief will still be available to every one.

Special Memorandum.

The answers to the questions have been recorded above, and I now proceed to make remarks on other points connected with villege *panchayats* which are deserving of notice.

At present it is not necessary that such *panchayats* be established in all villages of the Punjab at once. The system might be introduced experimentally into the most important towns or villages of a district or division; but the law and procedure for the guidance of *panchayats* should be laid down at once, in order that the Local Government may gradually extend the system to other places when it sees the system working well and satisfactorily, and the advantages resulting from it.

There are two great disadvantages in the establishment of *panchayats*,—*first*, the income from court fees will be diminished, but at the same time it may be remarked that Government will not be put to any extra expense, and the Financial Member of the Council will, owing to reduction of work in courts, be enabled to devise schemes for reducing expenditure to some extent. It is probable, therefore, that there will be no objection on this score. *Second*, the income of pleaders and mukhtars will be materially reduced, but on the other hand, the country at large will be benefited in proportion.

I now proceed to describe the advantages which will result to the country and to the Government from the system—

1st—Very heavy expenses are incurred in petty cases in the shape of costs of the court, pleaders' fees, which are very considerable, the expenses of journeys to and fro of the parties and witnesses, and the loss caused to suitors by their absence from home and business. All these evils will be avoided.

2ndly—When a case is brought into Court, it becomes a matter of toss up as regards winning or losing; it creates ill-feeling and disputes between the parties, and one case branches out into ten more. The agency of *puncháyats* will prevent both ill-feeling and spite, and also the springing up of one case from another, because both parties will ordinarily consent to the decisions of the *panchayats*.

3rdly—If the district courts turn their attention to the matter, zamíndárs will be greatly benefited by the system in one respect, which be cannot done through the medium of the courts. It is true that agricultural implements, plough bullocks, houses and revenue—paying land are legally exempt from attachment and sale in execution of decrees, but the produce of the land is not so exempt; and the district courts, regarding a case of execution as a mere matter of form, delegate this duty to some Ahlmad or Reader. The fact that, if the judgment-

debtor is deprived of the produce which was the fruit of six months' labour on his part, he will have nothing to subsist on for the next six months necessary to raise a fresh crop, is ordinarily lost sight of, and eventually the result is that the zamíndárs, merely to sustain life, are obliged to alienate their lands temporarily or permanently. Such alienations for similiar necessities are on the increase day by day. If, therefore, such decrees passed on zamíndárs be sent to a *panchayat* for execution, the *panchayat* would take into consideration the circumstances of the zamíndár and the quantity of the produce, and according to its discretion make over some of the produce to the decree-holder, and allow the judgment-debtor to retain the rest for his subsistence. No court could do this without making a local enquiry. Nor could a court cause an amicable settlement between the parties in the same way that a *panchayat* could, because the courts have no leisure for such a purpose and possess no knowledge of the parties, and, moreover, are not at liberty to press the parties to come to an amicable settlement. The effect of the proposed system will be to protect zamíndárs generally from the permanent ruin caused by the alienation of their lands. It is true that Government has prohibited the sale of land, but the result of execution of decrees is that alienations of land under pressure of decrees are increasing day by day, as stated above.

4thly—At present courts of justice are seriously encumbered with the trial of petty cases, and have no time to devote to the more important ones. If the petty cases be taken off their shoulders, they will be considerably relieved, and will then have ample time to go carefully through any complicated cases.

Minute by H. M. PLOWDEN, Esquire, Judge.

Neither of my learned colleagues in their recorded opinions has proposed any scheme for investing the Punjab Courts with summary jurisdiction in the interest of agriculturists or others, and I have no proposal of the kind to advance. The observations I have to offer will, therefore, be confined to the question in the first paragraph of Secretary to Government's letter No. 1212, and without going into the points mentioned in the second paragraph.

It does not appear to me expedient to invest any courts in the Punjab with summary jurisdiction, in addition to those which already possess it—that is to say, Courts of Small Causes.

Only a few years have passed since the institution of Munsiffs' Courts in the Province, and as that scheme is carried into practice, the disputes of litigants are decided by courts of first instance, to which suitors can resort with a very moderate degree of inconvenience, as regards the distance they had to travel, or the duration of a suit.

The experience even of a few years in judicial work has been already productive of improvement in the character of the decisions of munsiffs, regarded as a separate body of Judges, and this result may justify the expectation that they will continue to improve. But it would be premature to pronounce these Judges fit to be trusted with a summary and final jurisdiction at present.

The improvement in the judicial work of munsiffs must, in some measure, be attributed to the action upon them of the superior courts, to whom the decisions of the courts of first instance are appealed. The retention of a system of appeals seems to me expedient, not only in the interests of suitors, who undoubtedly value the right very highly, but as reacting beneficially upon the Judges, by making them careful in conforming to the rules of procedure prescribed by law, and dealing thoroughly with their cases. The duty of supervising the administration of justice by the inferior courts—a duty which must continue to be imposed upon the superior courts under any change of system that could be proposed—is greatly facilitated, and the labour entailed is most evenly distributed under a system which leaves it to dissatisfied suitors to select the particular cases in which the work of a subordinate Judge shall be subjected to the scrutiny of a superior court. I should be very sorry to see the right of appeal, as it now exists in this Province, abridged or curtailed in any way, until the ordinary courts of first instance are presided over by stronger judicial officers than at present exist in the Punjab.

On the subject of *panchayats*, I concur generally with the observations of my learned colleague, Mr. Justice Thornton. I think that the Code of Civil Procedure provides all that is really necessary to satisfy lovers of arbitration, as a mode of determining civil disputes by the provisions it contains for giving effect to private awards in a summary manner, and for references through a court in the course of a suit.

There is no class of courts in the Punjab which I should desire to see invested with summary jurisdiction. It would be practically most inconvenient to give original jurisdiction in petty cases to Commissioners. In regard to judicial officers of lower grades, such as Deputy Commissioners, Judicial Assistants, and full-powered Assistants, I believe the interests of suitors will be best consulted by withholding such jurisdiction, and making their decisions subject to appeal. If it is expedient to constitute more courts with such jurisdiction, the provisions of the Small Cause Court Act enable the Local Government to multiply courts of that class.

The existing judicial system of the Province works, in my opinion, as efficiently and satisfactorily as can be expected, considering the shortness of the time it has been in operation; and I do not think there is sufficient reason for any innovation of the kind suggested at the present time. An experiment is being made upon a large scale by means of the Deccan Ryots' Act, and I am decidedly opposed to introducing changes of the kind contained in that enactment upon our existing system, until experience has demonstrated that the policy adopted in regard to the Deccan is sound and capable of more general application with the likelihood of producing good results.

Minute by J. W SMYTH, Esquire, Judge.

THESE papers have only recently come before me, and as our reply to the letter of the Government should no longer be delayed, I shall not detain them for the purpose of making any lengthened observations. I have had the advantage of perusing the minutes of my learned colleagues, and I am entirely of their opinion that no change should be made at present in the judicial system of the Punjab. It has only recently been remodelled, is working well, and on the whole gives satisfaction to the people.

I am not in favor of the proposal to invest any Courts in the Punjab (other than those which already possess it) with a summary or final jurisdiction to try any class of suits. The right of appeal is highly valued by the people, and the statistics show that it is not abused. It is, moreover, by far the most efficient means of ensuring that the subordinate Courts shall duly discharge their duties; and this is a consideration which can hardly be over-rated in a Province where, as a rule, pleaders do not practise in the subordinate Courts, and where the proceedings of those Courts are not subject to the influence of any public opinion or criticism.

I am opposed also to the proposal for instituting Courts of conciliation and for resuscitating *panchayats*. I concur generally with Mr. Justice Thornton in the remarks he has made regarding both, though I am not prepared to go quite so far as he does in condemning the *panchayat* system as it was worked in the Punjab just before the introduction of the Code of Civil Procedure. It was often convenient, and I think advantageous, to make over questions of custom, or of caste, or family disputes, or intricate questions of account, to a *panchayat* of three or five persons nominated by the parties for inquiry and report, the right of decision being reserved to the Court and the decision being subject to appeal in due course. I think it is to be regretted that the new Code does not contain some provision of that kind. The power given to the Court under the Code to appoint a commission for local inquiry or examination of accounts is not quite analogous, though attempts are often made by the Courts professedly in exercise of that power to appoint commissions of more than one person somewhat after the manner of the old *panchayat*, to give their opinions on the matters in dispute. What the people really object to is the investment of any commissions or *panchayats* with any power of final decision. This is why they object so decidedly to the arbitration sections of the Code. The fact is that they have really so little confidence in the integrity of arbitrators as a rule that they altogether decline to entrust their disputes to them for final decision. Any

proposal therefore for resuscitating the ancient *panchayat* and investing it with jurisdiction to decide suits would be extremely unpopular, and it is certain that no such tribunals would possess the confidence of the people.

I am not disposed to take quite such a favourable view of the condition of the agricultural classes in the Punjab as that taken by Mr. Justice Thornton. It is of course very far removed from that which has been described as prevailing in certain districts of the Deccan, but I fear that in many parts of the Punjab the agriculturists are deeply involved in debt, and though this may not have led to so many transfers of land by way of sale or mortgage as might otherwise have been expected, I fear that it is none the less true that the agriculturists are, in parts of the Punjab, in an embarrassed state of indebtedness and to a considerable extent in subjection to the village money-lenders. But I do not think that any change in the constitution or procedure of our Courts will tend to rectify this state of things. It is due not to our laws, but to the ignorance and improvident habits of the people, and to their folly in spending large sums on marriages and other social occasions which may have the effect of saddling the family with debt for generations. It is due also to some extent to the grasping character of the money-lenders, who are only too ready to gratify the folly of the agriculturist and lend him money at exorbitant rates of interest, and when once the agriculturist becomes indebted to the money-lender it is almost a hopeless task for him to attempt to extricate himself. The bond is renewed periodically for the principal and interest, and the amount soon swells at compound interest to a sum altogether beyond the means of the debtor to pay.

If it is considered necessary to provide a remedy for this state of things I think it should take the form of a change in the substantive law rather than in the constitution or procedure of the Courts. I am strongly in favor of our Courts being invested with a larger correctional power than they at present possess over this class of contracts, such as that described by Sir Arthur Hobhouse at page 412 of the volume of printed papers, including a power to disallow compound or exorbitant interest. I would also, in the Punjab, refuse altogether to allow ancestral land to be sold in execution of a money decree, even when the land was mortgaged as security for the repayment of the money. To allow any exception in favour of mortgaged lands would simply result in this, that the money-lender before advancing money to an agriculturist would always require him to execute a mortgage of his land, and the last state of the debtor would be worse than the first.

Minute by T. H. THORNTON, Esquire, Judge.

Limits of the discussion.

I GATHER that the matter in regard to which our opinion is invited is *not* whether any change is called for in the law of contract or of evidence, but whether any change is deemed desirable in the arrangements for the disposal of suits between agriculturists and money-lenders, that is, any change in the constitution or procedure of the tribunals by which such cases are decided in the Punjab.

2. Assuming that I have correctly understood the limits of the reference, I propose to consider—

I.—What are the present arrangements for dispensing justice between the Punjab peasantry and the money-lending class?

II.—What is the present condition of the peasantry, in its relations with the money-lending class?

III.—Whether any, and what, amendments of the present system are called for?

What are the present arrangements for dispensing justice between the Punjab peasantry and the money-lending class.

Number of agricultrists and money-lenders.

3. Allowing for natural increase since the census of 1868, the population of the Punjab may be estimated at 20,000,000 persons, of whom 11,000,000 are agriculturists; and of the 9,000,000 who are not agriculturists, about 60,000 are money dealers, and about 3,00,000

petty shopkeepers, who frequently combine the occupation of money-lending with that of selling goods.

Number of Courts.

4. For the disposal of original civil suits amongst this population, there were in 1877 the following tribunals:—

Location	Courts	Powers.
Chiefly at the head-quarters of districts.	32 Deputy Commissioners of districts. 22 Judicial Assistants.	Original and appellate in suits up to any value.
	127 Assistant and Extra Assistant Commissioners.	Original only in suits up to Rs. 10,000 in value.
	*8 Judges of District Small Cause Courts.	For final disposal of small debt suits in the larger towns.
	8 Judges of Cantonment Courts.	For final disposal of small debt suits in Cantonments.
Scattered through-out the districts.	164 Tahsíldárs and Náib-Tahsíldárs. 74 Munsiffs.	Original powers in suits up to Rs. 3,000 in value, or in the case of Náib-Tahsíldár up to Rs. 50 in value.
	55 Honorary Civil Judges.	Do. Do. (with one or two exceptions.)

Proportion of small debts courts to number of agriculturists.

5. Of the eight classes of courts above enumerated, the three last, *viz.*, the courts of Tahsíldárs, Munsiffs and Honorary Civil Judges are the courts chiefly engaged in the disposal of debt suits between agriculturists and money-lenders. They are presided over by Native Judges, and number in all 293. There is thus one tribunal to 40,000 agriculturists. In England, where the proportion of civil suits to population is nearly five times as great as in the Punjab, there is one county court to 4,00,000 persons.

Their average distance from the homes of the peasantry.

6. The courts are located at 163 different points of the inhabited portion of the Province. covering an area of 30,000 square miles. There is thus one court, or group of courts for every 180 square miles of inhabited area, so that, as a rule, there is in the Punjab a court of justice within 7 miles (or an easy day's walk) of a peasant's home. In England there is one small debts' court to 970 square miles.

Procedure in force.

7. The procedure in force is that of Act X of 1877, the Code of Civil Procedure, with a few modifications to which I shall advert hereafter. This procedure, so far at least as small debt suits are concerned, is simple, rational and well adapted for eliciting the truth. Under its provisions suits between agriculturists and money-lenders are disposed of in these rural courts at an average duration of less than 20 days.*

Appeals.

8. An appeal lies from the decisions passed to the District Court. This power of appeal is highly valued by the people, but it would not appear to be abused, for 82 per cent. of appealable decisions are unappealed.

Average costs of suits and appeals.

9. The average cost of a debt suit in a Tahsíldár or Munsiff's Court, including institution-fee, process-fees and expenses paid to witnesses, varies, according to the value of the suit, from about Rs. 1-4 (2*s.* 6*d.*) to Rs. 5 (10*s.*), and the cost of an appeal is much the same; but if the parties before coming into court get their dispute settled by a village *panchayat* or by arbitrators, they can file the award in court. and thus obtain for it the force of a decree on payment of a fee equal to one-fourth of the fee required for institution of a plaint for the same amount. Measures were taken so far back as 1867 to make these provisions widely known; but they are very rarely made use of. for, as will be shown hereafter, the people, except in caste or trade disputes, have little faith either in *panchayats* or in arbitrators.

Substantive law.

10. The subtantive law applied is The Indian Contract Act, 1872, as interpreted by the Chief Court of the Punjab; and the wide definitions of "undue influence" and "misrepresentation" contained in Sections 16 and 18 of that Act, give the courts the most ample power to set aside agreements which are not absolutely voluntary.

Procedure in execution of decrees.

11. In execution of decrees against agriculturists their necessary apparel, implements of husbandry, cattle required for agricultural purposes, and houses are, under the general

* Reduced towards the close of the year to 4.

* By *duration* is meant the period which elapses between the institution of a suit and its final decision; it thus includes not merely the time taken in the actual trial, but also (1) the time allowed the defendant in which to appear and answer; (2) the time elapsing between the settlement of the issues and their trial; and (3) the time taken up in adjournments.

law now in force, exempted from attachment and sale, and the sale of land may, on the representation of the District Officer, be avoided and temporary alienation substituted therefor. In the Punjab, moreover, another safeguard is provided for under local rules which have the force of law. Under Section 327 of the Code, no ancestral or joint acquired property in land can be sold in execution of decree without the sanction of the Chief Court, which is rarely accorded.

Local rules.

12. Such being the arrangements in force in the Punjab for dispensing justice between the agriculturist and money-lender, I proceed to consider—

II.—What is the present condition of the Punjab peasantry in their relations with the money-lending class?

Present condition of Punjab peasantry.

13. On this point I beg to call attention to the correspondence ending with the Resolution of the Punjab Government, dated the 23rd December 1874, in which the whole question of the alleged indebtedness of the Punjab peasantry was considered. The Resolution should be read *in extenso*, but for convenience I extract the following paragraphs, which have the most direct bearing on the question now before us :—

Punjab Government Resolution of 23rd December 1874.

"*Para.* 12.—Looking then, in the first place, at the statistics of civil justice, it appears that while the total number of agriculturists in the Province is upwards of 10,000,000, the total number of suits for debt brought against this class does not exceed 80,000 in the year. So that in one year 1 agriculturist out of 125 is annually sued for debt; but a reference to the Blue-book of judicial statistics annually laid before Parliament will show that in *England and Wales about 1 person in 22 is annually sued for debt in the county courts alone*; and this notwithstanding the fact that the period of limitation for suits on account is twice as long as in this Province.

"So far, then, as freedom from debt suits is a test of solvency, the agriculturists of the Punjab must be considered far better off than the inhabitants of England.

"13. But, again is there any valid ground for supposing that the agriculturist is being driven by pressure of debt to transfer his lands to others to any serious extent? The Financial Commissioner has during the year furnished statistics which afford an answer to this question. From these statistics it appears that during the last five years—

"(1) Sales of land for debt in execution of decrees of courts were almost unknown : only one sale of ancestral land was sanctioned in 1873.

"(2) That the number of voluntary sales of land averaged less than 6,000 per annum, so that, as the proprietors of land, according to the Financial Commissioner's returns, number 2,006,670, only one proprietor out of 334 parts with land in the year.

"(3) That the number of mortagages averages less than 15,000 in the year, being at the rate of 1 mortgagee to 133 proprietors.

"(4) That the aggregate area of assessed land annually transferred by private sale amounted on an average to less than 1 acre per square mile ; that during the past year there were only 6 districts in which more than 1 acre per square mile was transferred, and in only a single district more than 2 acres per square mile.

"(5) That, on an average, not more than 2 acres per square mile were annually mortgaged, that last year in only 7 districts did the number of acres exceed 3 per square mile, and of these districts 5 are among the most prosperous and wealthy in the Province.

"(6) That the value of land is steadily rising in the market, and last year averaged $28\frac{1}{2}$ years' purchase of the Government assessment.

"14. Assuming, then, as the most unfavourable view of the case possible, that all these transfers of land are made to money-lenders, and in consequence of

pressure of debt, it will be seen that the number and extent of such transfers are insignificant, and the only fair deduction to be made from the statistics is, that the proportion of extravagance which prosperity and credit naturally produced is in the Punjab most creditably small.

"But, in point of fact, there appears no valid reason for supposing that all these transfers, whether by sale or usufructuary mortgage, are made to the money-lending class, or are in consequence of pressure of debts. Some of the sales are doubtless the result of the high prices offered, and many of the mortgages for the purpose of raising capital for agricultural improvements, while the law of pre-emption places a most effective check on the acquirement of village lands by other than members of the proprietary body; and it is shown by statistics collected in one district of the Province, that the bulk of the transfers of landed property are made not to village bankers, but to brother agriculturists. So far, then, as statistics are concerned, it would appear that the apprehensions which have led to a call for legislative interference are at present without adequate foundation.

"15. But His Honor does not base his opinion on statistics alone; in the course of his annual tours he has visited every district in the Province, and the result of his inquiries corroborates the above conclusion. He has found that though there may be individual cases of embarrassment, due in most cases to personal extravagance, the state of the peasantry is in general eminently prosperous; and he concurs with the Financial Commissioner (who is also well acquainted with every part of the Punjab) in the opinion that the transfers which are taking place do not exceed, or indeed nearly equal, the number which may safely accompany the natural and healthy development of wealth in a country in backward circumstances."

No deterioration since 1874.

14. Now, unless the condition of the Punjab peasantry has greatly deteriorated during the last five years, there would appear *primâ facie* to be no need for exceptional legislation. There has, indeed been a certain amount of local distress owing to the failure of the rains in 1877, but I am not aware that there has been any serious general depression. On the contrary, it appears from the Annual Administration Reports that the average selling price of land has risen to 30 years' purchase of the land revenue assessment, while it has been ascertained from inquiries made subsequently to the date of the Resolution, that in 1876-77, out of the cultivated area of the Province comprising, with fallows, 25,000,000 acres, less than one fourteenth part was under mortgage, no less than 23,240,000 acres being unencumbered.*

Selling price of land has risen.

Area under mortgage singularly small.

Suits for debts in proportion to population very low compared with England.

The number of suits brought by money-lenders against agriculturists has, indeed somewhat increased, but this can be at once explained by the large increase of Judicial agency effected in 1875 by the establishment of 74 Munsiffs' Courts.

15. But though there may be no need in the Punjab for exceptional legislation, such as that which has been proposed for the benefit of the Deccan ryot, it is, of course, quite possible that our present system of judicial administration may be capable of amendment, and that changes may be beneficially made in the direction contemplated in the Deccan Ryots' Bill. This leads me to the third subject proposed for discussion, *viz.* :—

Proposals for amending present system considered.

III.—Whether any, and what, amendments are required in our present system of administering justice between the agriculturists and the money-lending class?

16. In the Resolution of 1874, to which I have already called attention, the following proposals were considered. :—

Looking behind the bond.

(1) That courts should be enjoined to "look behind the terms of a bond," so as to unravel the real nature of the transaction, and ascertain the principal amount with a view to the adjudica-

* Compare this with the situation in England, where, according to Laveleye, mortgages amount to 58 per cent. of the value of the land, and in Lombardy, where they amount to 25 per cent. Even in France, the paradise of peasant proprietors, one-tenth of the land is under hypothecation.

tion of such a sum by way of interest as might seem equitable in cases where, owing to the absence of free consent, the elements of a perfectly enforceable contract were wanting;

Extension of term of limitation in suits on account.

(2) That the term of limitation for claims on account should be extended from 3 to 6 years;

Further restrictions on mortgage or sale of lands.

(3) That further restrictions should be placed on the voluntary sale or mortgage of lands by providing—

(a) that no transfer of land shall be permitted in payment of debt to a creditor, and

(b) that no mortgage shall be valid for more than the life-time of the mortgagor without the sanction of official authority;

On attachment of produce.

(4) That so much of the produce of land as represents the cost of cultivation should be exempted from attachment; and

Abolishment of imprisonment for debt.

(5) Lastly, that imprisonment for debt should be abolished.

17. In regard to these proposals, it is pointed out in the Resolution—

(1) That the contract Law, as it stands, gives ample power to a Court to "look behind a bond," if there is reason to suppose that the agreement it embodies is not absolutely voluntary; that the special attention of all judicial officers in the Province has been called to the subject by a circular issued by the Chief Court in 1873, and that it is believed that the power of setting aside or modifying inequitable contracts has been, and is, freely used in the courts of the Punjab;*

(2) That the second proposal would only stave off and ultimately intensify the evil it is sought to remedy;†

(3) That the third and fourth were exceptional measures of interference with private rights not called for in the Punjab; and

(4) That the total abolition of inprisonment for debt was not advisable for the following reasons:—

"Looking at the statistics of civil justice, it appears, that, in the year 1873, though the number of applications for execution disposed of was 110,384, in only 6,107 cases were judgment-debtors arrested; that out of these it was only found necessary to detain 708, and that, of those detained, the great majority were released before the expiration of three months. It is further to be observed that any judgment-debtor who satisfies the court that he has no assets and has not committed fraud is at once released, and that information as to the law on the subject is hung up in every civil debtors' ward. Now, having regard to the fact that the sale of land in execution of decrees, is, in the Punjab, practically prohibited, that execution against other property is constantly evaded by concealment of assets, or vexatious claim to property attached, and lastly, the fact that the existing rule of interest charged is said to be exorbitantly high, His Honor is doubtful of

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* I am not sure that this "equitable" power has not been carried a good deal too far so as to have the effect of greatly demoralizing the peasantry. There is a common saying, that under the operation of our laws "*mulk baiman ho giya*," (the world has become faithless;) meaning, that persons are allowed under the pretence of equity, to repudiate the most solemn contracts.

† I would add that the argument use in favor of extending the three years' limitation for suits on account, *viz.*, that the present law compels a creditor to sue his debtor within three years, unless the debtor obtains respite by executing a bond, is a complete fallacy. What the law requires and most reasonably requires, is, that there must be at lease once in three years a settlement of accounts, and a written acknowledgment by the debtor of the balance due. If this condition is complied with, an account may run on for an unlimited time, and be recoverable. The effect of the proposed change in the law will be, that accounts instead of being balanced once in three years, will be allowed to run on for six, a most undesirable arrangement in my humble judgment. How opinion oscillates! When the three years' limitation for suits on account was first introduced, it was applauded throughout India (except by a few Calcutta tradesmen) as a triumph of statesmanship, and I well recollect the feeling of relief experienced by judicial officers in the Punjab, who had previously to dispose of cases of accounts running for perhaps twelve years without a single settlement or voucher.

the expendiency of reducing the security of a creditor still further and raising the rate of interest by depriving him of a means of compulsion which is found to be eminently effective, is not shewn to be abused, and is so fenced with precautions as to be almost incapable of being made an engine of oppression."

18. In the opinions expressed above, I entirely concur.

Other proposals considered.

19. But there are two other proposals just now in the ascendant which require consideration. They have neither of them the merit of novelty, for, to my knowledge, they have been "off and on" before the Government or the public for more than twenty years, but antiquity does not render them less captivating.

(1.) Utilization of village *panchayats* and arbitration.

(2.) Establishment of "courts of conciliation."

One is the proposal to utilize that "ancient institution," the *panchayat*, in the general administration of justice, and encourage resort to arbitration in preference to courts of law; and the other to establish courts of conciliation, such as those now existing in France, for the friendly adjustment of disputes.

20. In regard to the first proposal, I deferentially observe that it has already had a fair trial in the Punjab and completely failed. The second has never been actually tried in the Punjab, not, however, because the advisability of establishing courts of conciliation has not been fully considered, but because the rulers of the Punjab were satisfied that the system was not only not wanted, but would be exceedingly unpopular. Of course, it is within the limits of possibility that the administrators of the Punjab were wrong, but I venture, under the circumstances, to deprecate the introduction of the system into the Punjab until the success of the experiment about to be tried in the Deccan has been proved beyond a doubt.

Attempt in the Punjab to utilize *panchayats* and arbitrators a failure. Account of the experiment.

21. I have said that the *panchayat* and arbitration systems have already been tried in the Punjab and failed, but official memory in India is short, and the history of that experiment and its lessons are already being rapidly forgotten.

In these circumstances, perhaps, it will not be out of place if I put on record a brief account of what was done and how it ended.

22. When the Punjab was annexed in 1849, its administration was made over to a board of three. Of these, one (Sir H. Lawrence) was a soldier, statesman and philanthropist, that is, a lover of all mankind except lawyers and Regulation Judges. The two others, John Lawrence and Robert Montgomery,* were ex-collectors from the North-Western Provinces, burning with righteous indignation at the delay, expense, technicality, and chicanery of the *old* Regulation Civil Courts.

* For short time Mr. Mansel was the 3rd member.

As might have been expected, the Board thus constituted resolved that, so far as in them lay, the new Province should be saved from so terrible a scourge. It was, therefore, determined that, in arranging for the administration of civil justice, the greatest possible use should be made of existing institutions, that is, of the customary modes of settling disputes and claims; for, under Sikh rule, there was no attempt at an organised system of civil justice.

23. Well, the favourite mode of settling disputes in the Punjab at the time of annexation, was either by reference to a *panchayat*, that is, a committee of village elders, or of the leading men of a town or tribe, or by reference to arbitrators appointed by the parties themselves. Here, then, it was hoped would be found the means of securing for the Punjab a cheap and popular tribunal for the decision of civil suits, especially those affecting the social relations of the people, or involving inquiry into long and intricate accounts.

24. Accordingly, instructions were issued to the effect, that, whenever a suit was lodged for debt, or for damages for breach of contract of marriage or betrothal, &c., &c., the district officer should first try to effect an amicable adjustment of the dispute; failing this, the parties were to be referred to a *panchayat*, or to arbitrators; or in the event of the parties steadily objecting to

such a course, to a *punch sultani*, or committee of respectable citizens or village notables, appointed *ad hoc* by the district officer. At first no special form of procedure was laid down for observance by these tribunals; they were to dispose of the dispute according to custom, and their decisions were to be deemed final, unless there was "flagrant and manifest partiality."

25. The system seemed (on paper at any rate) all that could be desired, and its adoption was heralded to the world with a pardonable flourish of the patriarchal trumpet, as follows:—"Private arbitration is a potent means of popular justice. The attribute of divine discenment which the people of India fondly ascribe to their cherished* institution is no less associated with arbitration in the mind of the Punjabi. From the first, the Board have been anxious that public disputes should be referred to that rude tribunal whose voice is all powerful in the regulation of private affairs, &c., &c."†

* Meaning the *panchayat.*

26. But it soon became apparent that the "institution" was not so fondly cherished as was supposed, and that the influence which guided the arbiters to the decision was certainly not "divine," and frequently of a very earthly character. At length Major Hamilton, the Deputy Commissioner of Mooltan, had the temerity to represent that in his district "reference to arbitration had proved rather an obstruction to the settlement of a dispute than the means of its speedy andjustment." He received a suitable official snub, but complaints went on, and ultimately, even D. F. McLeod (then Commissioner of the Jullundur Division) "a patriarch" to the back-bone, was forced to admit that the arbitration system, as then worked, was hateful to the people.

The Board then yielded, and thereupon the system was radically altered. Thenceforth the *panchayat* and arbitrators were no longer recognised as patriarchal tribunals for the settlement of disputes in native fashion; they were transformed into committees for investigating issues made over to them by the Judge; they were to record evidence and give reasons for their findings; and their decisions were no longer to be deemed final "unless there was flagrant and manifest partiality," but, on the contrary, were to have no validity at all, unless confirmed by the Judge, who might accept, reject, or modify them, as he thought fit: and the ultimate decision, even though the Judge and arbitors were in accord, was subject to appeal.

27. This hybrid system of arbitration continued in the Punjab, with some alterations of procedure, until the extension of the Code of Civil Procedure to the Province in 1866.

As to its working, despite a strong disposition amongst some of the older officials to support it, the system grew more and more into disfavour with the people and the courts, and after some unsuccessful attempts at tinkering, it was displaced in the year above-named by the arbitration provisions of the Code.

28. The history of its life of thirteen years may be gathered from the following extracts from official correspondence.

29. The amended system was introduced in 1853. The records of 1854 and 1855 are silent, but in those of 1856 symptoms of misgiving are apparent, for in his review of the Administration of Civil Justice, the Chief Commissioner observes that "great judgment and due discrimination must be evinced in determining what cases shall be placed before arbitrators."

30. In 1859, bolder opinions are expressed. One district officer states that "the *panchayat* system is losing popularity" and another reports that he "hardly ever employed arbitration unless parties wished it; his experience being, that the people preferred their suits being settled by the rawest Assistant, &c."

The Commissioner of Lahore (then Mr. Temple) gives a cautious but not very encouraging opinion, observing that "the manner in which the defeated parties almost invariably impute partiality to their own arbitrators is remarkable." Thereupon, a new principle was laid down by the provincial minister of justice: "The arbitrators," it was said, "should be speedily summoned, and when once in court, should not beallowed to leaveit, except under very special circumstances;

† These lines were written by Mr. (now Sir Richard) Temple than, Secretary to the Punjab Government. His *present* opinion is thus given in paragraph 3 of his Secretary's letter of the 8th September 1879: "With regard to the recommendation of a village *pancheyat*, I am to say that the Governor-in-Council has no faith in the efficient working of a *panchayat* of respectable elders."

"for," continued the Judicial Commissioner, "if *punches* are allowed to depart and take their own time, they *naturally* cast about for bribes."

31. But the next year (1860) the complaints were more pronounced, "*panchayats*" wrote the Commissioner of Hissar, "are often so corrupt and apparently increasingly so, that, unless expressly wished for by the parties, or otherwise deemed essential, it is better perhaps to avoid reference to arbitration." Mr. Barnes, the Commissioner of the Cis-Sutlej States Division, admitted the evil, but sought to attribute it to the fact the arbitrators were not sworn, and to want of "vigilant surveillance" on the part of the Judge "in a country where bribery is considered a venial offence." The Commissioner of Lahore, Mr. Forsyth, admitted that," unless well looked after, arbitrators were apt to indulge in corruption;" and Captain James, one of the ablest Commissioners the Pesháwar Division ever had, remarked: "I have as little confidence in the awards of arbitrators as the people have themselves."

32. In the reports of 1861 remarks to the same effect are common, and, singular to relate, the Commissioner of Lahore boldly essays to explain the corruptibillity of arbitrators as a consequence of the instructions of 1859, which, it will be remembered, were issued for the express purpose of *preventing* bribery. "Seated round the village tree or in the *chaupal*," writes the Commissioner, "they will discuss and decide the dispute entrusted to their judgment with great attention and due regard to substantial justice, but when the arbitrators are taken from their homes to a formal court, how can we be surprised at the too frequent complaint that the *panchayat* have not perfectly inquired into the case, and have given a partial decision."

33. In 1862 and 1863 the reports are far from favourable.

In 1864 the same strain is continued; and in 1865, the Judicial Commissioner lays down the principle, that parties are no longer to be pressed or forced, but only "encouraged" to submit their disputes to arbitration.

34. At length, in 1866, after considerable discussion, the Code of Civil Procedure was extended to the Punjab, and under its provisions reference to arbitration can only be made at the request of the parties, but when made, the decision given within the period allowed is unassailable, except on the ground of corruption or misconduct by arbitrator or umpire, or fraudulent concealment or wilful misleading by either party.

35. From this time reference to arbitration became more and more unpopular, and is now extremely rare, and the reason is candidly given in a report by the Deputy Commissioner of Lahore (then, I believe, Mr. Lepel Griffin):—

"There has been continual decrease in the number of these suits for several years, and this decrease I view with satisfaction, for I have no confidence in the decisions of arbitrators, either for honesty or wisdom, and from the statistics, that want of confidence appears to be shared by the people. No cases have been, it is true, upset on account of the corruption of the arbitrators, but this, I apprehend, rather arises from a certain apathy on the part of the courts and an unwillingness to take up the question of honesty at all, when every suit brought shows the almost total absence of any moral sense in the direction of truth. In almost every case of arbitration, the honesty of the arbitrators is impeached as a matter of course, and in my opinion the impeachment is probably correct."

36. A final effort was made in 1872, by one of the surviving supporters of what may be designated the "Punjab system" to uphold it in preference to the arbitration system of the Code, but was thus dealt with by the Lieutenant-Governor, Sir Henry Davies:—

"With regard to the remarks on the subject of the decrease in the number of cases decided by arbitration, His Honor is not prepared to deny that a wider power of appeal against the decision of arbitrators may be necessary; but, at the same time, he must demur to the remark of the Commissioner of Lahore, that the diminished resort to arbitration is 'an example of a really great and popular native custom destroyed by our theoretical improvements.'

"The reason alleged for the diminished resort to arbitration is the fact that, under the Code of Civil Procedure, the award of arbitrators is final, unless it can be challenged on the ground of corruption on the part of the arbitrators, or referred back for reconsideration on the ground of incompleteness, irrelevancy, indefiniteness or illegality; whereas, under the old Punjab Civil Code, the award of arbitrators required the confirmation of the Judge on the merits, and was thereafter subject to appeal in the same way as a decision of Court.

"But so far as finality is concerned, the arbitration rules of the Code of Civil Procedure appear more in accordance with native custom than the procedure in the Punjab Civil Code. The decision of the old *panchayat* was final. The system of confirmation and appeal was introduced with the Punjab Civil Code, and it is this form of arbitration, rather than that recognised by the Code of Civil Procedure, which is open to the charge of being an innovation upon native custom.

"It is a mistake, however, to suppose that the arbitration rules of the old Punjab Civil Code, the supervision of which is regretted by the Commissioner of Lahore, were by any means universally approved. There is another side to the question. It has been urged that under the Punjab Code rules arbitration was often forced by order of court upon the parties to a suit; that the procedure was frequently dilatory, and led to nothing but delay and dissatisfaction; that men of business bitterly complained of being compelled to give their time gratuitously in attempting to adjust disputes, which after all might form the subject of interminable appeals; that the office of arbitrator came to be shunned by the respectable classes, and in some places to be monopolised by unscrupulous men, who hung about the courts and made a trade of offering their services to litigants, nominally for the settlement of the dispute, but in reality for the purpose of enriching themselves.

"In the event of the Code of Civil Procedure coming under the revision of legislature, it will be open to the Judges of the Chief Conrt to make such suggestions for the improvement of the existing system of arbitration; but His Honor will require stronger proof of the superiority of the system of the old Procedure Code than he has yet seen before recommending its revival. Meanwhile, it is to be observed, there is nothing in the existing law to prevent the parties from referring their differences to the village elders as in former days, before bringing the case before a court of justice. This course would practically give the parties a power of appeal from the decision of the *panchayat*, while, in the event of its award being accepted, provision is made in the Code of Civil Procedure (*vide* Section 327) for giving the decision the force of a decree of court."

37. The Code of Civil Procedure has been since revised, but no suggestion was made by the Chief Court for revising the old, or amending the present, system of reference to arbitration.

38. But I have not done with *panchayats* and arbitration in the Punjab. The system which I have been describing is one in which the *panchayat* or arbitrator is not applied to *directly* by the parties, but is set in motion by the court, and it may be argued, with plausibility, that the latter is not the system which it is the desirable to encourage; that our aim should be not to force arbitration upon litigants resolved to "go to law," but to resuscitate the old native *panchayat* by recognising it as a tribunal of first instance, to which claimants must apply in such cases or classes of cases as may be determined. "If," it is urged, "the institution of a suit in court is made a condition precedent to a reference to arbitration, no wonder that the system fails, for by that time the case in beyond the stage at which the parties are open to compromise or conciliation."

The Kángra *panchayats* for the disposal of betrothal and marriage suits.

39. The argument is plausible, but is controverted, so far as the Punjab is concerned, by the logic of experience. The system has been tried in the Punjab, but has failed conspicuously. In the Kángra district my old chief and lamented friend Sir D. F. McLeod, when Commissioner of the Division, attempted to resuscitate the

village *panchayat* for the disposal of cases connected with marriage and betrothal, a class of cases, one would have thought, eminently fitted for the decision of such tribunals. The system was worked for some years by earnest minded men, such as Colonel Reynell Taylor, Colonel Lake, Major E. Paske, and others, all animated with a sincere desire for its success; but it failed, and was swept away, along with the Punjab arbitration system, on the introduction of the Civil Procedure Code. Its disappearance is thus commented on by Major Paske, the district officer:—

Their failure.

"From what I have seen and heard, I believe these tribunals to have been on the whole very corrupt; that they tended to create the evil of constant breaches of engagements rather than apply the remedy; and I consider their abolition is a measure of unmixed good, welcome throughout the district.

"The regular courts are much preferred by the people for the adjudication of suits relating to betrothal and other social contracts; half the technicalities regarding tribal customs and usages that arose in the adjustment of social contracts in this district were perhaps the creation of the *panches* and *sirpanches* themselves."

General remarks on the *panchayat*.

40 The fact is, that the *panchayat* as a tribunal for the decision of disputes, flourishes under certain conditions; one condition being that *nothing better is to be got*. It thus flourished, and still flourishes, under native rule, but only in the absence of any other method of obtaining justice; it is still resorted to under our rule for the decision of caste disputes, with which our courts are incompetent to deal, and in disputes between traders, wherein both parties equally abhor the publicity of a court of law. But for ordinary civil suits, the decisions of *panchayats* or arbitrators are but a poor substitute for the justice obtainable in the court of an uncorrupt and educated Judge; and the people know it.

Is there any movement amongst the peopole, saving a few Babus and self asserting doctrinaires in favour of a revival of their "ancient institution?" Not a trace. But their *is*, at the present moment, a keen contest going on between two towns and a village in the Punjab as to which among them is to have the honor of having the court of a *stipendiary munsiff* located within its limits.

41. It is, of course, very pleasant to think of a system of patriarchal justice, under which disputes between the ryot and his banker are decided once for all by the *splendida judicia* of some village minors, or amicably adjusted by a group of elders seated in the shade of an umbrageous pipal. But, unfortunately, this is not what happens. What happens is, that the *panchayat* or arbitrator is "got round" by one of the contending parties; in other words, that wealth or influence, not justice, wins the day. For my own part, brought up at the feet of "patriarchs," I heartily advocate their policy of associating the people with us, and utilizing their agency in the business of administration, and am prepared with Sir Henry Davies to "sacrifice a large amount of theory" to secure substantial justice; but with every disposition to do so in the present case, and every desire to favor and cherish an ancient institution, I have sorrowfully but certainly arrived at the conclusion that any attempt to resuscitate the *panchayat* or arbitration tribunals of old time is a fond delusion, and that all who seek to do so must be reckoned amongst those estimable but impractical philanthropists *qui ont pris les souvenirs pour les esperances*.

Courts of conciliation will probably be a failure.

42. With regard to the courts of conciliation proposed in the Deccan Ryots' Bill, I may be wrong, but I am under a strong impression that they too will turn out a delusion and a snare. Born like the Kángra betrothal tribunals under the most favourable auspices, unnurtured by official patronage, clad in a mantle of rose-colored reports, they will survive for a season, but they will die nevertheless, and die unregretted. Even in France where the "conciliation" system has been practised with more success than in any other country, I have excellent authority for saying that the system is growing more and more into disfavour, and will soon be an institution of the past. In India the process of decay will probably be more rapid. It will soon be discovered that "conciliation" means delay and dissatisfaction, and at length

the melancholy truth will become apparent that he who seeks to be conciliated must first conciliate the conciliator.*

43. What then, it may be asked, is to be done?

Opinion as to policy to be pursued.

44. In the case of the Deccan, I answer *fiat experimentum*. You cannot make the Deccan ryot much worse off than he is now. But in the case of the Punjab, no such heroic remedy is called for. Adhere to your policy of bringing justice within reasonable distance of the peasant's home. Let it be cheap but not too cheap. Do not abolish appeals; the right of appeal is much valued by the people, and is not abused.† Persevere in raising the standard of your native judiciary, not merely by examination tests, but by treating them with respect and honor, gradually widening their career, and encouraging the sons of the aristocracy to qualify as Judges. Enjoin upon your judicial officers to conciliate where there is an opening for conciliation, but do not force arbitration upon unwilling suitors. If called on to give judgment, let your court administer the law, that is equity. Before enforcing an agreement, let them be satisfied that it is the result of "free consent" in the broad sense in which those words are used in the Contract Act, but do not let them, under pretence of equity, demoralize the people and double the rate of interest by setting aside or modifying contracts deliberately made. Keep your present rules regarding sale of land in execution decrees. Maintain your system of light assessments. Suspend freely the collection of land revenue in bad seasons. Simplify your rules under the "Land Improvement Act." Teach the sons of your peasants the three *R's*: and let *panchayats* and special courts of conciliation take care of themselves: and you will find, if I mistake not, that, despite our uncertain rainfall and occasional cases of embarrassment or distress, the Punjab will steadily advance in wealth, prosperity and happiness, and that its population will remain, as it is now, amongst the most loyal of the subjects of Her Majesty.

No. 3188, dated Lahore, 27th November 1879.

From—G. W. Rivaz, Esquire, Registrar, Chief Court, Punjab,

To—The Secretary to Government, Punjab.

With reference to your No. 3701, dated 13th ultimo, I am directed to submit copies of the minutes recorded by Messrs. Plowden and Smyth on the expediency of altering the present system of appeal in the Punjab.

2. Mr. Justice Lindsay's opinion is contained in a postscript to his minute on the subject of investing Courts in the Punjab with a summary jurisdiction, forwarded with my No. 3187 of this day's date.

Minute by H. M. Plowden, Esquire, Judge.

The subject of Secretary to Government's letter No. 3701 is closely connected with that of his No. 1212, on which I have already recorded my opinion, and the observations I have already made leave little to be added here.

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*The above remarks are not based merely on surmise and authority, I have myself attended the sittings of conciliation courts in France, and their procedure, I confess, did not very favourably impress me. In the cases at which I was present the process was somewhat as follows:—

What the parties to be conciliated came before the judge, he smiled and said, Bon jour! n'avez-vous pas en accord? Thereupon both parties spoke at once, and indicated by unmistakeable gesticulations *that the happy* consummation hoped for had not yet been reached upon which M. le Juge expressed his regret, and told the parties to attend another day.

There was no serious attempt to go into the merits of the case, or smooth away its difficulties. Of course, it would be exceedingly unfair to generalize from my limited experience, and assume that all conciliation cases in France are treated as perfunctorily as those at which I happened to be present. But I have further grounds for my somewhat unfavourable impression; for I had some years ago an opportunity of discussing the subject of conciliation courts with two distinguished Frenchmen,—one of them, the Marquis of Bassano, an eminent philanthropist and patriot, and the other, the Marquis of Bois Thierrh, an ex-Prefect. The impression I received from these experienced and able men was, that while conciliation in the hands of a good judge with time at his command was a very beneficial process, in many cases it was mere waste of time.

† Lord Lawrence once told me a characteristic story about appeals. A few years after the annexation of the Punjab he saw an old Sikh cultivator sitting on a bridge. He spoke to the man, and found he had just come from the charitable dispensary. Lord Lawrence asked him whether he had been kindly treated. "Yes," said the man, "most kindly." "Well," continued Lord Lawrence, "if Sikh rule had lasted," and the Punjab had not been annexed "you would have had no dispensary to go to." "True," said the old Sikh, "and I should not have had this bridge to rest on." "Come tell me then," said Lord Lawrence, encouraged by the old man's language, "tell me which of all the benefits conferred by British rule you value most?" "Well," said the man, "your dispensaries are good, your roads and bridges are good, your canals are good, your courts of justice are good, but there is one thing you have done which is better than all the rest: you *have given to the meanest cultivator a right of appeal*. The local *hakims* will no longer have it all their own way."

The proposal in paragraph 16 of the Secretary of State's despatch No. 13 would, if adopted, introduce a change in the law of this Province which does not seem to me desirable. At present the law in force in this Province, which was re-enacted as recently as 1877 (Act XVII.), gives three hearings on the merits to all cases under Rs. 500 in value (except cases of the nature cognizable by Small Cause Courts, under Rs. 50 in value), when the first Appellate Court modifies the decree or order of the first Court, and a second or special appeal in addition, except in cases under Rs. 500 of the nature cognizable by Small Cause Courts.

Further, the Code of Civil Procedure, in Section 622, as amended by Act XII. of 1879, gives a power of revision in cases not open to appeal, substantially the same as the Secretary of State recommends in the paragraph already quoted.

Possibly in the Province of Bengal and elsewhere, where the inferior Courts are presided over by trained officers of large judicial experience, such an innovation as is proposed may be feasible and expedient. But I do not think the proposal is adapted to the calibre of our Punjab Courts at the present time.

As I have already stated in the minute above referred to, I think the existing freedom of appeal in the Punjab reacts beneficially upon the subordinate Courts, in addition to giving satisfaction to suitors.

As regards the proposal in the 18th paragraph of the despatch, I think it is a sound principle which requires the concurrence of two Judges of a High Court to reverse or modify the decision of a Lower Court. As a matter of practice, in this Court the Judges already sit singly to hear appeals; and a very large number of appeals are heard and dismissed by a single Judge, in a considerable proportion of cases, after a thorough examination of the records of the proceedings in the Lower Courts. The result is, that only these cases go before a Bench of two Judges, in which one Judge considers that there is a *primâ facie* probability of the order under appeal being modified or reversed, or that the appeal involves points worthy of full consideration by two Judges. I do not think the practice could prudently be pushed so far as to empower a single Judge to do more than confirm the decision of the Lower Court, or dismiss the appeal.

Minute by J. W. Smyth, Esquire, Judge.

I concur with Mr. Justice Plowden in thinking that no change should be made at present in the appellate system of the Punjab. It has only recently been revised; it works well, and the people are satisfied with it.

No. 1,009, dated Kasauli, 5th September 1879.

From—Major E. G. Wace, Settlement Commissioner, Punjab,
To—The Secretary to Government Punjab.

Reply to reference regarding expediency of investing certain Courts in the Punjab with a summary jurisdiction in the interests of the agriculturists.

I have been prevented by other urgent duties from replying sooner to your Nos. 1216, dated 2nd April, and 2745 dated 28th July last, inquiring whether it is expedient in the Punjab to invest the Courts of various grades with a summary jurisdiction in the interests of the agriculturists; nor can I now answer a reference of this important character without asking that, in judging my proposals, allowance may be made for the fact that I write under pressure of other urgent duties. The inquiry practically opens up the whole question of the suitability of our present Law of Civil Procedure to the circumstances of the agricultural classes; it in fact admits the existence of grave doubts on the subject, and raises the question whether the particular measure proposed is the one best adapted to remedy the existing faults in that Law. The question thus viewed is an exceedingly wide one; and I feel that, writing my answer as I do under the pressure of other urgent duties, I can do little more that deal with one side of it. I shall endeavour less to represent my own views than what I believe to be the feelings of the agriculturists themselves. And it will be as well to state that my experience has been confined mainly to those portions of the Province which lie to the west of Lahore.

2. I cannot say that I think either the agricultural or the money-lending classes would view with favour the proposal to appoint selected individuals of their body, under the name of conciliators, with power to attempt to settle their claims as a necessary preliminary to their being heard in Court. The conciliators would necessarily be selected either from the village headmen who are agriculturists, or (probably in less frequent instances) from the money-lending class. To whichever class a conciliator belonged, the other class would usually mistrust his fairness; this feeling would be, I may almost say, universal; and my own experience compels me to admit that it would usually be well founded. We should either have to appoint a great many conciliators, in which case their average standard of character would be low; or comparatively few, the selection of whom would be extremely difficult; and in this case being few and scattered, the conciliators would not have any natural standing as local referees; and would be, in fact, to the great majority of people who consulted them, merely another kind of Civil Court.

Proposal to appoint conciliators with powers to attempt to settle claims as a necessary preliminary to their being heard in Court not likely to be viewed with favour by the agricultural or money-lending classes.

3. In considering a proposal of this nature, it is of importance to bear in mind what measure of success has as yet attended our previous efforts to invest local notables with judicial powers, or to develop a class of local notables holding an authority intermediate between that of the village headmen and our Tahsíldárs and police officers in charge of stations. The experiment of investing local notables with civil and criminal powers cannot be said as yet to have advanced beyond the experimental stage. While admitting the success of individual instances, the difficulties attending our attempts in this direction are sufficiently expressed by the bare statement, that after 20 years of this experiment, there are * as yet only 12 municipal benches and 16 other unpaid judicial officers in the Province; and of these 16, only 8 are natives of the Province. It would be quite untrue to represent this result as due to any reluctance on the part of local officers to ask Government to invest local notables with judicial powers in the instances in which they are qualified to exercise them. Under the head of our other attempts to develop a class of local notables, I refer mainly to the zaildár system; and if conciliators, on the system contemplated by the Deccan Relief Bill are to be appointed, it is mainly from this class that they would be selected. It would probably not conduce to the harmonious working of any such system were we obliged to pass over the zaildárs for such appointments, and to select other residents of their circles. But the zaildár system is as yet scarcely beyond the experimental stage. It seems to be suited to some districts, and not to others. And though the selections for this office have usually been the best that the case admitted of, their personal character is in many instances such as would not justify our entrusting to them the duties of a conciliator.

Such proposal should be considered in connection with the amount of success that has attended the experiment of investing certain local notables with criminal and civil powers and zaildári powers.

* See Administration Report for 1877-78, Statement No. 14.

4. I consequently arrive at the conclusion that it is not desirable in the present state of our agricultural communities to adopt for the Punjab the system of conciliation proposed in the Deccan Relief Bill. On the other hand, there is no doubt that native opinion would strongly favour a system which promoted, by any measures properly adapted to their society, the amicable settlement of disputes between parties on the threshold of our courts. Before indicating the manner in which I believe this end may be secured, it will be convenient if I indicate the other main points in which our existing system of Civil Procedure tends increasingly to diverge from that which prevailed anterior to our rule, and from the standard which the people themselves believe to be best adapted to their circumstances.

But native feeling would strongly favour the introduction of a system of conciliation suited to their circumstances.

5. The feature in our administration which the people most dislike is the multiplication of departments, each with its local representative authority. Their ideal of administration is, that there should be one local representative of Government who shall preside over all their interests. Our administration tends increasingly to a directly opposite result. Every village has now to deal with at last three different local authorities, the station police

The multiplication of local authorities with separate jurisdiction opposed to the people's ideal of administration.

officer, the revenue Tahsíldár, and the civil Munsiff. Leaving the police officer out of consideration it may be justly asked whether the appointment of two independent authorities, one to deal with revenue matters and the other to deal with civil causes, was wise. Possibly to those who are imbued with the traditions of our Indían Legislation, the question may appear scarcely worth considering. But it is perfectly certain, that the native feeling is entirely opposed to such a separation of jurisdiction, and that the same agency would be utilised by them, not as we have utilised it by creating two independent jurisdictions in each tahsíl (that of the Tahsíldár and the Munsiff), but by dividing each tahsíl into two tahsíls, and by requiring the officer in charge of each tahsil to decide both revenue and civil cases.

Strong feeling in favour of the union of all jurisdictions in the hands of the immediate local authority.

6. The view on this question of a person who approaches it from the stand-point of Western jurisprudence is materially opposed to the view of the agricultural classes. The jurist wishes above all things to provide a good code of law and a trained agency to administer it. The native agriculturist does not feel the want either of such a code or of such an agency. His conception of a local ruler's duty is, that he should be equally interested in all his concerns, and directly responsible for all his welfare. I think an impartial view of the life of the agricultural classes will confirm the practical wisdom of their feeling in this respect. Of no country is it truer that no man owns land, but only an interest in land. The crop when it stands ripe at harvest does not belong to the cultivator; a part belongs to him, a part to the village banker, and a part to the State. Yet, under the present state of the law, the supervision of the interests thus closely connected is shared by local authorities independent of each other. For instance, a Munsiff can attach the whole crop*; and if the cultivator pleads that the law consequently leaves his family without any food for the next month, and also compels him to defraud the State of its share, the Munsiff can only reply that this is not his concern, that his duty is confined to administering the civil law. The natives have an intense and, as it seems to me, well founded dislike to a division of authority of this nature. As a matter of experience, the petty cases, which form the great majority of our civil litigation, are better disposed of by officers who are by their duties accustomed to weigh all sides of the agriculturists' interests, than by those whose duties are confined to one department only.

* Paras. 9 and 10 of appended extract from a letter which I wrote on the subject when the present Procedure Code was under consideration.

The power the law gives a creditor over his debtor condemned by native opinion.

7. In the next place, native opinion condemns most thoroughly the great power which our law gives to a creditor over his debtor, and the blind way in which we enforce rates of interest that are obviously destructive of the debtor's prosperity. Besides the instance referred to at the end of the previous paragraph, an agriculturist is liable to be summoned at the caprice of his creditor at all seasons of the year,—sowing time, harvest time, or any other time. No matter how necessary his presence on his land, the summons is issued and must be obeyed, under risk of heavy penalties if neglected; the summons often involving a journey of 20 miles and back, or several such journeys, according to the number of hearings necessary to the decision of the case. Again, when a decree has been passed, it is not the business of the Court to provide any reasonable method of satisfaction; the law allows the creditor to settle that, and the time when he will enfore it, for the most part with sole regard to his own interests. And finally, we have instituted a system of bonds, registration and balancing of accounts at short intervals which was unknown in the country before our rule, and the practical result of which is to discharge our civil judges from the duty of considering the merits of the debts claimed before them; and we enforce contracts for the payment of interest which are oppressive to debtors, and frequently ruin them, and which lack any sufficient justification as necessary to the prosperity of the creditor.

Feeling in favour of judicial action of a moderating character exercised in the immediate vicinity of the home of the parties.

8. Native tradition and their conceptions of justice are strongly opposed to all these features in our Civil Law. According to their view, civil causes against agriculturists should be decided as much as possible in the immediate vicinity of the village where the parties reside. In deciding the amount of debt

that is due, the judge should be bound by no devices of bonds, registration, periodical balances and agreements (in truth, entirely one-sided) to pay extravagant rates of interest, but should ascertain what is really due, and adding a liberal allowance for interest (their ideas as to what is a fair rate of interest are much more liberal than our own) forthwith settle between debtor and creditor a reasonable arrangement for the payment of the debt. In so far as such an arrangement may assign to the creditor a share in his crops, native opinion expects that provisions should be made first for the payment of the rent or revenue, and that of the balance, a fair allowance, not exceeding, nor usually less than, a moiety, should be left for the agriculturist's support. The spectacle of the unnecessary and profitless imprisonment of an agriculturist merely to enfore payment of a debt, is condemned by them as both cruel and wasteful. Obviously it either incapacitates him for paying, or throws him into worse debt. While the spectacle of the attachment and sale of an agriculturist's crop, without sparing him food wherewith to live or to feed his cattle till the next harvest ripens, is one against which their feelings of justice and mercy alike rebel.

Employment of Pleaders and Barristers in petty agricultural cases condemned by native opinion.

9. The employment of Pleaders and Barristers in petty agricultural causes is equally condemned by native opinion. The native view is, that the matters at issue are extremely simple, that the employment of such an agency unnecessarily adds to the cost of the litigation, an addition which in most instances the parties can very ill afford, and that the lower classes of legal practitioners are usually men of bad motives, who foment more litigation than they cure. These assertions are unquestionably true. It is, moreover, also true that for centuries prior to our rule the community have found it practicable to adjust their disputes without the intervention of any legal practitioners; and all the better men among them regard with regret the complication of their dealings with Government by an agency of this nature.

The reform of our Civil Courts in the way indicated in above paragraphs would be appreciated by all classes among the rural population, and could be carried out without additional expense.

Summary of points noticed.

10. The reform of our Civil Courts in the directions above briefly noticed would be treated with acclamation by all classes among the rural population, the money lending class not excepted; and such a reform would not add a single rupee to the present cost of administration. The points noticed may be more particularly summed up as follows :—

Union of jurisdiction.

(*a*). The separate jurisdiction of Tahsíldár (revenue) and Munsíff (civil, should be abolished. In its place each tahsíl should be divided into two; half being given to each of these officers, and each exercising in his half the civil, revenue and magisterial power ordinarily exercised by a Tahsíldár. Indeed, a third small circle may be formed in each tahsíl and entrusted to the Náib-Tahsíldár. These three officers should each in his own circle be responsible for all the interests of the people and of Government. No new tahsíl buildings would be necessary. There would be some convenience in having the head-quarters of all three officers in one place.

Hearings of circuit near the villages concerned.

(*b*). Suits against members of the rural population should never be heard at tahsíl head-quarters, except on sufficient proof of urgency. Two seasons should be fixed in each year, or possibly three, with due regard to agricultural convenience, during which each of these officers would go on circuit. The dates might unobjectionably vary according to the circumstances of each Division of the Province. The places of circuit should be fixed, but the Tahsíldárs should have full liberty to hear causes in any village for sufficient reason.

Prohibition of pleaders.

(*c*). The intervention of pleaders, mukhtárs, and other law agents, should not be permitted in these tahsíl courts.

(*d*). The lambardárs of the villages, whose causes are ordinarily heard at each circuit house, should be required to attend, as also selected leading men of other classes: and it should be the duty of the Tahsíldár, before proceeding to try formally any case, to endeavour with their assistance to conciliate the parties.

Association of village headmen with the courts.

(*e*). In dealing with all debt and mortgage accounts, it should be the duty of the courts to consider the sums actually paid and received on each side: in allowing interest they should be required to exercise a fair judgment between the parties. The creditor should not receive a lower rate than is necessary to give him a liberal return for his money; and the debtor should not be required to pay an extravagant charge for interest, nor in any case a sum exceeding double the principal. In all accounts in which interest is charged, the fact that the creditor has found it necessary to ask the court to recover the debt should be taken as *primâ facie* evidence of the inability of the debtor to pay a heavy rate of interest. And as by the act of appealing to the court the creditor gains a valuable security for the repayment of the debt, no decree should bear interest at a higher rate than $12\frac{1}{2}$ per cent. If a decree is enforced against the land, or if the suit is based on a mortgage, the future interest on the debt should be reduced at once to $6\frac{1}{4}$ per cent. for the same reason, *viz.*, that there can be no better security for a debt than a mortgage which the Civil Courts undertake to enforce. The assumption that in the existing circumstances of native society we can safely require our Civil Courts to enforce every pecuniary contract that the members of the rural classes make with each other, is the real basis of the law which our Civil Courts at present administer; and viewed in its effects on native agricultural society, it seems to me to be causing continually increasing evil.

Debt accounts and interest.

(*f*.) Every decree for debt should state the manner in which it is to be paid; and in dealing with applications for execution, the Court (adopting the rule of the old Punjab Civil Procedure) should not be bound to execute in the method stated in the application, but should be required to exercise its discretion, and to enforce it without unnecessary harshness, resorting always to the milder processes in preference to the harsher ones, whenever there is reason to believe that the former will be sufficient to enforce payment.

Control of execution proceedings.

(*g*.) The imprisonment of agriculturists for the debt should be abolished. The enforcement of decrees against them should be confined to harvest time. The circuits for hearing suits against agriculturists could probably be so arranged that execution proceedings could be heard at the same time. An agriculturist has little to employ him when the crops are half grown; and this is the time when both the suits against him and execution proceedings which are intended to secure a share in his crops, should be heard.

The same.

(*h*.) In all execution proceedings besides protecting a share of the crops sufficient to pay the rent and revenue and feed the agriculturist till the next harvest ripens, as proposed above in paragraph 7, the Court should be bound to prevent unnecessary waste and injury of the debtor by auction proceedings. The idea which guides the provisions of our Civil Procedure Code on this subject is, that the proper way of converting assets into money is an auction sale at the head-quarters of the court. This process is nearly always wasteful, and the very name of it is hated by the natives

The same: prevention of waste.

All such sales should be conducted at the circuit stations; and the village headmen should be required to assist at them. In the rare cases in which land is sold, it should be first valued, and if it realises less than 75 per cent. on its value, the full 75 per cent. should nevertheless be credited to the debt account. If the creditor himself buys the land at auction, he should take it at its previously estimated value, or at the sum bid at auction, whichever of these two is highest. The auction bid taken by itself is no true test of the value of the land.

Right of appeal not to be restricted.

11. I do not think it is desirable to restrict the right of appeal further than the law already does. Native opinion is certainly opposed to such a restriction But our Appellate Judges should be encouraged to use freely the power they possess under Section 551 of the Civil Procedure Code, of confirming a decree against which an appeal has been filed without summoning the respondent. The tendency of the superior authorities is to watch somewhat jealously the exercise of this power; whereas, if it is not freely exercised, the results is proposals, such as that under discussion, to restrict the right of appeal itself—a restriction which is opposed to native tradition and feelings.

An insolvency law in its application to agriculturists is really a usury law applied when interest has ruined them.

Native feeling on the subject.

12. Before concluding these remarks, I cannot help pointing out that our dislike of what we condemn as usury laws seems to me to lead us in India into a singular and injurious inconsistency. It compels us to resort to new insolvency laws. Now, insolvency among agriculturists in India is mainly caused by usurious charges for interest. Where this is the case, an insolvency law is only a usury law in a new disguise; moreover, it is a law applied to correct the ruinous nature of private contracts, at that time only when they have ruined the debtor. This is very like shutting the stable door after the steed has been stolen. No doubt a usury law which attaches penalties to contracts for high rates of interest is a bad law; but no one desires this. What the people wish for is a law which shall restrain our Civil Courts from using their authority to recover from debtors debts, of which the major part consists of charges for interest at rates obviously and notoriously inconsistent with their ultimate solvency. They feel very strongly that contracts for the payment of interest ought not usually to be supported to such an extent as will probable result in the loss by the debtor of his ancestral land and social position. An insolvency law does not meet this feeling at all.

The most promising remedy for improving the relations between the trading and agricultural classes of the rural population is the restoration in the lower grades of our revenue and civil agency of the native system of undivided administrative responsibility.

13. Briefly, while I am strongly impressed with the necessity of adopting all those measures for mitigating the harsher effects of our Civil Procedure which have lately been discussed by the Legislature, I do not think that they meet the principal necessity of the case, nor that they move primarily in the direction in which native feeling in the Punjab, were it possible to elicit a free expression of it, would express itself. I mistrust entirely the probable benefits of increased facilities for registration, the multiplication of tribunals, and the separation of revenue and civil jurisdiction. Every move that we have as yet made in this direction has been taken advantage of by the money-lending classes to increase their hold on the profits of the agriculturists. And on reflection, we are bound to admit that all measures of this nature are innovations, and were not resorted to by the rulers who preceded us, many of whom (when free from immediate apprehension of political anarchy) governed with no little success. The remedy which, in my judgment, holds out the greatest promise of improvement in the relations between the trading and agricultural classes of the rural population, is the restoration in the lower grades of our revenue and civil agency of the native system of administration, as proposed above in paragraph 10. The separation of the civil and revenue jurisdictions, refined and elaborate Codes of Law, and the encouragement of advocates, are excellent things in connection with the higher grades of the administration. But as applied to the simplest relations of rural life, they do not contribute to the prosperity of the people; and their practical result on the lowest grades of our judicial officers (Tahsíldárs and Munsiffs) is to discharge them from that direct and primary

responsibility for the welfare of the people in their charge, which, if it were encouraged by us, would prove the most powerful motive for good administration. If each tahsíl were divided into three parts as proposed by me, the entire administration of each part being made over to one of the three officials at present employed in the tahsíl (Tahsíldár, Munsiff, and Náib-Tahsíldár), the other measures advocated by me would easily follow, *viz.*, the hearing of agricultural causes in the immediate vicinity of the villages concerned, and the habitual association of the headmen of villages with the officers trying these causes. Along with such a change it would of course be necessary for us to adopt the native ruler's view of his duty in dealing with private contracts. Their best traditions have never sanctioned the blind enforcement of private contracts without reference to their effect on the prosperity of the contracting parties. And if it be the case that the exercise by our courts of a moderating influence in these matters is, except under very jealous restrictions, not sanctioned by the experience of European nations,—a doctrine, however, which recent discussions have gone far to discredit,—it is nevertheless plainly written on the history of our rule in India, that the abdication of this moderating authority by our courts in India has done, and is still doing, more than anything else to injure the prosperity of the agricultural class, and to undermine the other good influences of our rule.

Rural codes should be drawn up embodying a simple, but complete, statement of the law applicable to tahsíl courts and the causes heard in them.

14. I venture to add another suggestion. I think the attempt to train our tahsíldárs and munsiffs into experts of law is likely to produce a very poor imitation of the English judge. Without wishing to say anything against the efforts of the Legislature to supply the country with good codes of law, I am strongly of opinion, that we ought not to encourage our lowest grades of judicial officers to master more than a very limited portion of these codes. They are below the level of education at which it is possible for a man to use such codes properly. They master them in a way; but having only imperfectly mastered them, they apply them badly, and so confirm in the minds of the people a feeling to which the lower classes in every country are peculiarly prone, that law and justice are two different things. It should be the duty of the High Court of each Province to issue a code of law for the use of the tahsíl courts. The code should consist partly of extracts from the Acts of the Legislature, partly of condensations from such Acts in a form easy to be understood by the lowest grades of our judicial officers. The chief revenue authority should be required to contribute a similar brief condensation of the revenue law. The code thus framed should contain no provisions of law which are not usually required for the use of the tahsíl courts. In the proceedings of these courts, this code, and this alone, should be referred to. If a point of law were to arise before such a court for which the code did not provide, the presiding officer should be required to refer the matter for the instructions of the Deputy Commissioner, and should be guided by the reply received. Under this plain the tahsíl courts in respect of the matters on which they adjudicate would enjoy the full benefit of the Acts of the Legislature; while the officers presiding in these courts would be able to master, in an easy form, so much as relates to their personal duties. And no officer should be confirmed in such an appointment merely because he has passed an examination in this code, but only after he has exercised his authority for two or three years with success and with the approval of his immediate superiors, and has shown that he can be relied on to exercise a sound judgment in cases effecting the prosperity of the people entrusted to his charge, and to exert himself actively for their welfare. At present there is an increasing tendency to accept the results of a superficial examination as ordinarily a sufficient test of the administrative capacity of men who possess little real education, and whose moral character we have little previous means of estimating.

Extract, paras. 9 to 15, from letter No. 214, dated 19th February 1877, from Major E. G. Wace, Settlement Officer, Jhelum, to the Commissioner and Superintendent, Ráwalpindi Division.

Para. 9.—There are some points connected with the attachment and sale of an agriculturist's crops which seem to me deserving of attention. In the great majority of cases such a debtor holds his land subject to the payment of either rent or revenue. If he is a tenant, the first charge on the land by the ancient and universal custom of the country is the landlord's rent; if the debtor

is himself the landlord, the first charge is the State's revenue. If the rent paid by the land is a stated share of the produce (such as a half or a third), the whole crop does not belong to the tenant, and the decree-holder can therefore only attach the tenant's share. But if the debtor is a tenant paying a cash rent, or is himself the owner, a decree-holder can attach the whole crop, and sell it before either the rent or the revenue has fallen due; that is to say, the decree-holder can in either of these two instances so use the law as to compel the debtor to become a defaulter to the first condition on which he holds his land. I do not know how far the Legislature may have intended this, or whether the rent and land revenue laws in other Provinces provide any preventive against an injustice of this nature. But the Punjab Acts (see Act XXXIII. of 1871, Section 43, and Act XXVIII. of 1868) contain no effective provision of the kind. The dates on which our revenue falls due are purposely fixed a good deal later than the ripening of the crops ; and cash rents are usually payable a short time only before the revenue. And though as regards the revenue, the Collector can interfere effectively as soon as an arrear has become due (*cf.* section of Act XXXIII. of 1873), he cannot interfere sooner ; while as regards rent, it is not clear that the owner can protect himself under any circumstances. In making these remarks, I do not overlook the provisions respecting claims to attached property contained in Sections 247 and 248 of Act VIII. 1859, and those proposed in Sections 278 to 284 of the draft Code ; but the terms of these sections cannot be made to cover the cases under discussion without some training : had the intention been to cover such cases, the wording could easily have been made more explicit. And the Code ought to be so drafted as to compel decree-holders to pay due regard to such universal incidents of the tenure of land as the payment of rent and revenue. There is a distinct injustice in requiring (as provided in Section 279 of the draft Code) that our courts shall ignore them, until the lambardár or the owner himself appears and proves them. A decree-holder ought not to be allowed to attach an agriculturist's crops and to apply them to the satisfaction of his claim, except he undertakes to satisfy the conditions on which they were cultivated. The crops do not belong to the agriculturist absolutely ; they are only his subject to the payment of the rent or revenue charges due thereon.

The advantage at present enjoyed by a decree-holder which enables him to ignore such first claims on the land, has arisen accidentally ; for it is only a short time ago that the old usage, which enabled the State or the landlord to distrain the crops of a probable defaulter, ceased to be law. Such a power undoubtedly existed under the native government which preceded our rule, and would have held lawful in the earlier years of our own administration. The remedy I would suggest on this point is, that when a decree-holder applies for the attachment of an agriculturist's crops, he be required to file with his application an extract from the village papers, certified by the patwári or other prescribed official, showing the rent or revenue charges due thereon ; that if the crop be sold before such charges fall due, their amount shall be deducted from the sale proceeds, and paid by the officer who conducts the sale to the persons certified in the extract to be entitled thereto; and that if the sale be delayed to a date later than that on which all or any of such charges fall due, the decree-holder be bound to pay the charges on the due date, failing which the crops to be at once released from attachment. I refrain from any more detailed argument in support of this proposal, because I conceive that its justice is obvious, and can be suppported both by appeal to the ancient usages of the country, and upon grounds of common equity.

Urges the injustice of attaching an agriculturist's entire crop.

10. My next proposal is one that will be not so easily accepted, but I ask for its careful consideration, because I believe that for want of some such provision in our Civil Procedure, the action of our courts falls on the agricultural classes with a severity that is entirely exceptional. I would ask those who have it in their power to influence the course of legislation in this respect, and who are familiar with the condition of the rural agricultural classes, to try to realise the position of an agriculturist whose crops the decree-holder has attached and sold in satisfaction of his debt. The debtor's outlook is bad enough even if the proceedings have satisfied the decree ; but in a great number of cases a balance will be left over with no possible prospect of its liquidation, except by a repetition of the process at the next

harvest. Let us try to realise the circumstances of this agriculturist as he looks round on his empty threshing floor. What have we left him? We have refused to sell his tenure, and have protected his plough, his cattle and his seed-grain. What then? It will take at least four, and more often six, months before he can garner his next harvest; and how is he to get over that next six months. Except what we protect as seed-grain, not a day's food has been left in the house for himself and his family, and the very fodder of his cattle has been sold. Now, it is obvious to any person acquainted with the life of these people, that an agriculturist in this situation has only three courses open to him—

(1) He may tide over a few months by the help of his neighbours alone, in this case the law will *de facto* have satisfied the decree-holder at the expense of the debtor's neighbours; but such help is not usually forthcoming except for a few days:

(2) He may sell his interest in the land, or if, he has no saleable interest, he may desert his land, and become a day labourer or plough servant; but Government has decided that this is usually an undesirable result; and this opinion is held so strongly and generally, that I need not discuss this matter: or

(3) He lives on credit till next harvest. This is the course usually followed; and it means, speaking roughly, that he will, in the first place, consume his seed-grain for food; that he will borrow other seed-grain at sowing time, and have to repay it at harvest time in kind plus 50 per cent.; that he will be charged something like the same rate of interest on all he spends before next harvest to feed himself and family and his cattle; that when harvest time is approaching, the former decree-holder (if a balance remained over on the decree at last harvest) will repeat the attachment of his crops, and that the new account will be totalled plus interest and compound interest, at like ruinous rate, run on again.

And that in respect of his claim to retain part of his crop, the circumstances of the agriculturist differ from those of all other classes of the community.

11. I need not go into the details of the decrees by which village money-lenders and shopkeepers, while only charging a nominal 20 per cent., really succeed, in the course of two or three harvests, in charging an agriculturist in bad circumstances with Rs. 2 or more for every rupee of value received. The story is much the same all round India; and the causes of it lie deep in the social life of the people. The trouble is not to be cured by civil procedure, but it is to be aggravated by it, and distinctly has been and is aggravated by the unlimited power which our Civil Procedure has given to a decree-holder over the debtor's sole means of subsistence. The circumstances of the cultivator of the soil differ radically from those of the other sections of the community; and it is the *vice* of our Civil Procedure that it has failed to recognise this. What would be thought of such an application of our Civil Procedure as would follow a day labourer every evening to the place where he receives his wages, and take his whole wages out of his hand almost before it closed over them. If decree-holders were to succeed generally in using our Civil Procedure in such a way, would our Judges regard such a use of the law with satisfaction? But in what respect would such a line of conduct differ from the manner in which we at present allow a decree-holder to treat an agriculturist? In spirit very little. In its practical application there is a very important difference, and the difference is one which appears to me to give the agriculturist a peculiar and very just claim on our protection. It is this, that the artizan gets his wages every evening; but the cultivator of the soil must wait for them till his harvest ripens. If you deprive him of the whole proceeds of the last harvest, how is he to live till the next harvest ripens? We encourage him to hold on to his land by protecting his tenure, but by our rigour against his harvest we shut him up to a course of borrowing from the most usurious classes of his society, which course either practically enslaves both him and his family, or destroys the tenure which we desire to protect. Can we say that by treating the insolvent cultivator with such rigour we confer any ultimate benefit either on him or on society. It is possible to argue that you do, if you carry the rigour to the extent of selling the cultivator's tenure; but on a full considera-

tion of the subject based on three-quarters of a century's experience, we have decided that such forcible alienation of tenure ought to be discouraged as much as possible. Having definitely adopted a policy of this nature, it is difficult to justify such an extremity of rigour in seizing the fruits of each year's harvest as makes the ultimate alienation or destruction of the tenure a probable result of the majority of cases of insolvency. If those who read this report think I press the point too far, let them name any equally large and important class of the community who, like the cultivators of the soil in the event of attachment of their last earnings for debt, are so completely shut up to the purchase of the harvest necessities of life at the highest usurious rates, terminable only at the close of the current half year.

Inapplicability of proposed insolvency provisions for the relief of an agriculturist, Chapter XX. of Draft Code.

12. I do not think it has yet been sufficiently recognised that the majority of cases in which decrees against agriculturists for debt are sued out in our courts are cases of inability to pay. That is to say, when execution proceedings are taken out against an agriculturist, it is usually owing to the fact that he has no means of paying except by parting with his store of food for the coming season, his cattle, or some of his land. It is true that our law does not regard a man as an insolvent unless he will surrender his whole property; and the Chapter XX. in the Draft Code on the subject enforces this view of insolvency; so that an agriculturist will never be protected by the Chapter except at the cost of the ancestral heritage and status. I would urge that we can surely devise some means of helping an embarrassed agriculturist short of so caustic a remedy. To this end, and with reference to the foregoing remarks, I beg leave to make the following suggestions.

Suggests that a process by a creditor against his debtor's land should reduce the subsequent rate of interest on the debt to 6¼ per cent.

13. It is a well-established rule, that it is impossible by legislative or judicial action to put a limit on the rate of interest payable on general transactions between money-lenders and agriculturists. But while admitting this as a general rule, it seems to me deserving of consideration, whether the fact of a decree-holder's being obliged to proceed against the debtor's ancestral land might not be taken as *primâ facie* evidence of the inability of the debtor to fulfil a usurious contract from more ordinary resources that (failing proof to the contrary) this presumption should prevail; and that then all subsequently accruing interest on the debt should be reduced to a rate of $6\frac{1}{4}$ per cent. per annum. In the usual course of good loan transactions, debts secured by land pay less interest than those not so secured. We can therefore justly apply such a principle to the securities enforced by our courts.

That a certain share of an agriculturist's crop be protected from attachment;

14. In the next place, when a debtor earns his livelihood by the cultivation of land, either as its owner or as its tenant, or is remunerated for his labour by a share in the produce or stated amount thereof payable at harvest time, I think that sound considerations, both of political economy and of humanity, require that half of such produce should be exempt from attachment for debt. In cases in which a cultivator, being owner of the land cultivated or tenant paying cash rent, appropriates the whole produce at harvest, subject to the payment of the State's revenue, or the owner's cash rent, it would be sufficient to protect one-third of the produce, and to pay the revenue or cash rent from the remaining two-thirds before making over the balance to the decree-holder.

And that agriculturists should be to a certain extent protected against imprisonment.

15. And lastly, I would urge that a decree-holder ought not to be allowed to imprison a debtor who is engaged in the cultivation of the soil, except the debtor has been guilty of fraudulent acts in order to evade payment of his debt.

In my previous remarks I have not given any reasons for this last proposal. But in almost daily contact with the agricultural classes, I have formed the opinion that the unlimited power of personal imprisonment of a debtor, which the law has placed in the hands of a decree-holder, has a mischievous effect on the relations of the agriculturists and money-lenders. The threat of such imprisonment is commonly used by the more unscrupulous of the money-lending classes to compel an agriculturist to enter into engagements, which,

but for such a threat, he would be able to avoid. And it is obvious that a process which makes it impossible for a cultivator to plough his land and husband his crops is of a wasteful character; and as such, one which it should be in the power of our courts to control by simpler means than that contemplated by Chapter XX. of the Draft Code. The arrest of a cultivator at sowing time, or when the crop is ready for the sickle, is often sufficient to complete his ruin. At the least, it is likely to make the difference between a good yield and a poor one; that is to say, between such a yield as will enable the cultivator to live and to pay his debt, and a yield which will pay his debt and oblige him to borrow for food in anticipation of the next harvest.

Opinion of Rai Hukm Chand, Extra Assistant Settlement Officer, Mooltan.

There should be courts in all large towns and villages for decision of petty cases in which agriculturists are concerned.

Their establishment would save agriculturists the expense, trouble, and inconvenience which they now incur by being obliged to have recourse to distant courts.

The judges of these courts would be natives of the locality, and be able to dispense justice to their fellow-countrymen there. Respectable, influential, honest and efficient men should be selected as judges, without reference to their class or their being zaildárs or lambardárs.

The judges should sit as a bench, and not singly.

2. Their appointments should be honorary and unpaid, but the services of the more notable might be annually recognized by Government by the grant of khillats. This would give them distinction, and stimulate others to follow their example.

3. The courts should have jurisdiction over 15 to 20 villages, and within a radius of 5 or 7 miles, and have cognizance in the following classes of cases of a money value not exceeding Rs. 20 :—

Money transactions,

Arrears of rent,

Damage to crop or trees.

After some practical experience the determination of cases involving a higher money value might be entrusted to them.

4. Their orders should be appealable, as well as subject to review by the judges themselves within one month from the date of decision.

5. It should be optional with suitors to resort to these courts, and for the defendant to have the case transferred for sufficient reason to the district court.

6. The proceedings of these courts should be subject to the control of the Deputy Commissioner, and the files be periodically inspected by him; while other officers on tours should also have power to examine their proceedings.

7. The courts should execute their own decrees, but they should not have power to attach the property of the judgment-debtor, or to imprison him.

8. For suits instituted in such courts, the following scale of court fees should be adopted :—

Under Rs. 5	... 2 annas.
Above Rs. 5 and under Rs. 10 ...	... 4 ,,
Above Rs. 10 and under Rs. 20 ..	... 8 ,,

Process fees should also be levied at reduced rates in such suits.

9. I would attribute the poverty of the agricultural classes to want of thrift, marriage expenditure, proneness to litigation, and newly-acquired habits of extravagance, which compel them to resort to the money-lender, whose compound interest quickly completes their ruin.

I do not think that there is any hardship involved in the present system of realizing the land revenue. In exceptional seasons a remission or suspension of the revenue demand might be more freely granted. In recent settlements the revenue of river-side villages has been made fluctuating, and for these nothing more is needed.

Opinion of MUNSHI GHOLAM NABI, Extra Judicial Assistant, Gujrát, on Village *Pancháyats*, received in reply to the Punjab Government letter No. 1219, dated 2nd April 1879.

IN my opinion there should be the following grades of courts :—

2. (1). Deputy Commissioner.
   (2). Judicial Assistant and Extra Assistant Judicial Commissioner.
   (3). Assistant Commissioner and Extra Assistant Commissioner.
   (4). Tahsíldár.
   (5). Munsiff.
   (6). Náib-Tahsíldár.
   (7). Additional Munsiff.
   (8). Honorary Judge.
   (9). Village Pancháyat.

3. No courts, except Nos. (1), (2) and (9), should be invested with summary powers until after it has exercised full powers for five years.

4. The existing number of civil courts is insufficient for the proper disposal of the civil cases instituted in them. More attention is paid to the quantity than to the quality of their work, so as to swell the number of cases shown as disposed of in monthly and quarterly returns. The present mode of deciding cases is therefore unsatisfactory. When a judge gives full consideration to the cases brought before him, suitors and witnesses are obliged to attend his court repeatedly without being heard or examined through press of work, and the expense and inconvenience thus occasioned is not compensated for by the just decision eventually obtained. This evil can only be remedied by an increase in the number of existing courts. I, therefore, suggest the establishment of the new courts Nos. (6), (7), (8) and (9) mentioned in paragraph 2 of this note.

Some Náib-Tahsíldárs (6) have already been invested with powers.

The appointment of Additional Munsiffs (7) should be only provisional, pending the formation of courts Nos. (8) and (9); and when a sufficient number of honest and efficient men for honorary magistracies and village *pancháyats* is procurable, the above courts of Additional Munsiffs might be abolished. Honorary Judges and members of *pancháyats* should be respectable, influential, intelligent, and, if possible, educated men. They should be selected by vote, and confirmed in their appointments by the Chief Court.

Pancháyats should be composed of a bench of six judges, sitting three at a time in rotation. Their primary duty should be to enquire into cases on the spot, and induce parties to come to terms; and failing that, to decide the cases on their merits, such decision being governed by the opinion of the majority.

The judges of other courts should sit singly.

5. Tahsíldárs and Additional Munsiffs should receive salaries of not less than Rs. 50 a month.

Honorary Judges should get no pay, but village *panches* should receive a commission of 15 per cent. on the value of the property affected by their awards. The commission should be payable from stamp and process fees, the scale of which should remain unaltered, unless the income from these sources be found insufficient to meet the charge, when the scale of the former might be proportionately raised for that purpose without causing inconvenience to suitors, who will be benefited in other ways.

The Additional Munsiffs and Honorary Judges should have establishments costing not more than Rs. 30 a month in each case.

6. The jurisdiction of the courts of village *pancháyats* should be within 25 square miles; of Honorary Judges 50 square miles; and of Náib-Tahsíldárs and Additional Munsiffs 100 square miles. Courts Nos. (6) and (7) should be empowered to decide cases not exceeding Rs. 100 in value or amount; Court No. (8) suits not exceeding Rs. 50 in value or amount; and Court No. (9) those not exceeding Rs. 20. These powers should be exercised only in cases not involving immoveable property.

In like manner, summary jurisdiction should, with the same restriction, be given as follows :—

	Rs.
Deputy Commissioner, Judicial Assistant, and Extra Judicial Assistant	100
Assistant and Extra Assistant Commissioner ...	50
Munsiffs and Tahsíldárs	30
All other officers	20

7. The decisions of experienced judges should be final up to one-half of their summary monetary jurisdiction, and all courts should have power to review their own decisions under Section 623, Civil Procedure Code.

8. In addition to the power given to the Chief Court by Section 622, Civil Procedure Code, a Deputy Commissioner, Judicial Assistant, or Extra Judicial Assistant should be empowered to cancel or modify, for specified reasons, any decision of a lower court which may not be appealable, and a Commissioner should possess the same power in regard to the decisions of courts Nos. (1) and (2).

9. No summary decision should be set aside by an Appellate Court without full enquiry into it, such enquiry being made by the Court itself or by some subordinate Court.

10. Suitors should institute their cases in local courts, but they should be allowed to do so in higher courts on showing satisfactory grounds in their application.

11. Each court should keep a register of summary cases showing the nature of suit and defence, and an abstract of evidence and decision, with reasons for the latter.

These registers should be examined monthly by the Commissioner in the case of the courts of officers (1) and (2), and by Deputy Commissioners, Judicial Assistants and Extra Judicial Assistants in the case of all other courts.

The officers examining should have power to cancel or modify any decision on examination of the register under the conditions set forth in paragraph 8 of this report, but no such power should be exercised in appealable cases.

12. Every officer on tour should have power to examine the proceedings of an inferior court, and to report on them to the proper higher authority, unless he is empowered to deal with the cases as provided above.

13. Ordinarily, decrees should be executed in accordance with the Civil Procedure Code, but they might also be put into execution on verbal application at discretion of the court.

14. Rules should be framed for the guidance of courts invested with summary jurisdiction.

15. As far as I am aware, there are no tracts in this Province in which a system of adapting the land revenue to the variation of the season need be introduced.

Dated Simla, 6th October 1879.

From—Sodhi Hukm Singh, Extra Assistant Commissioner, Mír Munshi to Punjab Government, and Member of the Anjuman,

To—The President, Anjuman-i-Punjab.

As a member of the Anjuman-i-Punjab, I beg to submit herewith my opinion on the revival of the village *panchayats*. Should you think it proper, it may be submitted to Government, Punjab, in continuation of other opinions already forwarded to it by the Anjuman.

I beg to apologize for the delay which has occurred in submitting it to you.

Opinion by SODHI HUKM SINGH.

THE Punjab Government, in their No. 1222, dated 2nd April 1879, asked the opinion of the Anjuman-i-Punjab on the expediency of constituting local courts in the interests of agriculturists, &c. The subject has been fully discussed by the Association, and the following is my opinion on the matter.

2. I consider the revival of "village pancháyats" would be very beneficial, both in the interests of the rural population and also of the Government.

Before, however, proceeding to enumerate these advantages, I beg to record my answers to the eight questions put on the subject by Government.

3 I.—The court of a village *panchayat* should be composed of at least three Judges, who should sit as a bench, and who should be, as a rule, men of position, influence, honesty and education.

4. II.—No salary need be given them, but at the end of every year certificates and dresses of honor might be conferred on deserving members, both as a recognition of their services and as an incentive to others.

5. III.—The limits of their jurisdiction might vary according to the nature and circumstances of their locality, but should in no case exceed 20 miles in circumference.

6. They should decide all suits cognizable by Courts of Small Causes, as well as those connected with betrothal, marriage, divorce, dower, and damage to crops, trees, and grass, &c., not exceeding Rs. 50 in value, and when they shall have gained full experience by an exercise of judicial powers for three years, of such suits not exceeding Rs. 100.

7. On the criminal side, they should try petty cases of riot, affray, trespass, public nuisance, and the like, with power to inflict 15 days' imprisonment or a fine of Rs. 10, or both.

8. IV.—*Panchayats* and the existing courts should be invested with the following scale of summary jurisdiction in civil suits, which will, however, not extend to landed property:—

(1). A village *panchayat* up to Rs. 20.

(2). A Tahsíldár or Munsiff, Rs. 30.

(3). An Assistant or Extra Assistant Commissioner with special powers, Rs. 50.

(4). An Assistant or Extra Assistant Commissioner with full powers, Rs. 150.

(5). A Judicial Assistant or an Extra Judicial Assistant, Rs. 300.

(6). A Deputy Commissioner, Rs. 500.

9. Decisions within these limits should be non-appealable, but subject to review by the courts passing them.

10. Each court exercising summary powers should keep a register showing—

(1). Date of institution of suit.

(2). Names of parties, with parentage, caste, and residence.

(3). Nature and value of claim.

(4). Issues drawn by court.

(5). Names of plaintiff's witnesses, with an abstract of their evidence.

(6). Names of defendant's witnesses, with an abstract of their evidence.

(7). Grounds of decision and final decree.

(8). Result of execution of decree.

11. V.—Litigants should be compelled to resort to local courts if their suits be cognizable by them, but might have the option of referring or removing them to higher courts on showing good grounds.

The Deputy Commissioner should also have power to remove any suit from a local court, either on application from parties concerned or at his own

discretion, and this power of removal should be frequently exercised by the Deputy Commissioner, to prevent the possibility of partiality being shown by the local judges.

12. VI.—The courts of village *panchayats* should be under the special supervision of the Deputy Commissioner; but any officer of or above the rank of Tahsíldár or Munsiff might examine their proceedings and report to the Deputy Commissioner for any action he might consider necessary.

13. The Deputy Commissioner should be further invested with power to cancel or modify a regular or summary decision of the village *panchayat* court on the revision side.

14. VII.—Decrees passed by village *panchayat* courts should be executed by them on the verbal or written application of the decree-holder, and those passed by higher-courts might with advantage to suitors be also executed through the local courts.

15. VIII.—On plaints instituted in local courts only three-fourths of the ordinary fees should be levied. This will induce people to refer every trifling matter in a larger number of cases to them, and thus augment the income derived from fees so as to meet the establishment charges of the new courts.

16. Having answered all the questions put by Government, I now proceed to enumerate the advantages attending the introduction of the *panchayat* system.

17. I.—Education being one of the qualifications required in a judge of the village *panchayat* court, men of position and local influence, who at present neglect to receive themselves or to afford their children a good education, will be induced to acquire it. The cause of education will be further advanced by such men whose interestedness in the matter may in course of time lead them to supplant Government schools by private and grant-in-aid institutions. Government will thus be relieved of a portion of the cost of providing education.

18. II.—The agriculturists and others will be relieved of the great expense and inconvenience they now experience in attending distant courts.

19. III.—The existing courts will be relieved of the present press of work.

20. IV.—A more satisfactory administration of justice will be secured by the selection of judges for local courts from among the people with whose habits, customs, dealings, and antecedents they are familiar.

21.—V.—The heavy cost of existing courts will, in course of time, admit of reduction, and a saving would be effected without loss in efficiency, which will, on the contrary, be increased.

22. VI.—It is a notorious fact that the number of false witnesses, cheats, and bad characters have largely increased since the annexation of the Punjab, and the cause of this appears to be the loss by village *panchayats* of their power and influence. Their revival would therefore bring a more direct check on such offenders, and tend to a decrease of these crimes.

23. VII.—The most important political advantage to be derived by the adoption of the proposed scheme will be the identification of the interest of men of local influence with the British Government. In this, as perhaps in every other country, loss of power is more keenly felt than that of wealth, and although the British Government has conferred innumerable advantages on the people, it has not restored to men of local influence the position they previously occupied under Native rule. This is consequently looked upon as a grievance, and the restoration of this power would bring these men and the Government into closer association, and tend to secure and increase their loyalty.

24. The only objection to the scheme is the want of a sufficient number of educated men in villages; but this should not cause it to be condemned,

as it should be remembered that an uneducated villager can better satisfy his ignorant fellows than an educated stranger.

25. It is a well known fact that when all exertions to decide a case fail, recourse is either had to local enquiry or the parties are induced to appoint arbitrators (*panchayat*) and the decision thus come to is considered final. As every case instituted in local courts is to be investigated on the spot and by the judges who actually occupy the position of arbitrators, and possess a local knowledge, there is no reason to apprehend that their decisions would be either incorrect or unsatisfactory to the parties concerned, who are further at liberty to apply for the removal of their cases from the local to other courts if they have reason to expect injustice or partiality on the part of the judges.

26. Considering both sides of the question, I am in favour of the revival of the village *panchayats*, which have worked well in the past, and may reasonably be expected to do so in the present or future so long as the best men procurable are selected.

Abstract of opinions of certain Native Gentlemen on the revival of village Panchayats.

Nawáb Abdul Majíd Khán, of Lahore.

THERE can be no two opinions, he thinks, about the popularity of *panchayats* to settle small cases in villages. They are often resorted to now in preference to going to court. Educated men are not necessary. Justice can be administered in the class of cases likely to come before *panchayats* by men who cannot read or write, as the men appointed would know the litigants well, and be able to detect false cases well. He thinks the revival of the system would be well received. He recommends a simple code to guide the *panchayats*.

Rai Múl Singh, of Lahore.

CONSIDERS that village *panchayats* would be popular, and be attended with good results. From old times they have always existed, and been liked by the rural population.

Points in favour of them.—Suitors saved the waste of time occupied in going to court: expenses much less: cases settled by judges well acquainted with the people, and capable of sifting the truth, being on the spot: false evidence would be more easily detected: appointments to *panchayats* to be honorary: men carefully selected: two or three members to each circle of 10 or 12 villages: powers summary: appeal allowable within 30 days: suits not to exceed Rs. 25: execution of decrees the same as now in force: no stamps on petitions: plaints transferable from one circle to another by order of Deputy Commissioner.

Diwán Rám Náth, Extra Assistant Commissioner.

WRITES in favour of village *panchayats* for the same reasons as those urged by Rai Múl Singh.

There should be two or three members in each *punch*, carefully selected men. Suits up to Rs. 30 cognizable; stamps as in courts. Patwáris to sell stamps: members to be paid Rs. 30 per mensem out of "mulbah" fund establishment, also 3 circles to each tahsíl: appeal to be allowed: no case to be removed from *panchayat* without very good reasons being given. Execution of decree to issue on verbal application, unless instalments are allowed.

Hursukh Rai, Editor, *Koh-i-Núr.*

VILLAGE *panchayats* would be most popular, and much resorted to by the agriculturists. Agrees with all Rai Amee Chund's opinions. Educated men not necessary so long as they are respected by the people. If Government can select Honorary Magistrates, Municipal Commissioners, Tahsíldárs, surely they can select men fitted for *panchayats*. Let those men who dislike *panchayats* go to the Sadr courts. Advantages of *punches*.—District Courts work lightened: expenses of litigation less: less waste of time: the suitors will not be looted by vakíls and petition-writers.

Mya Dass, Mukhtar.

He considers village *panchayats* composed of uneducated men unnecessary.

He proposes boards of judges receiving from Rs. 100 to 200 per mensem for circles of 15 miles in circumference, with summary powers and no appeal. Suits not to exceed Rs. 20; decrees to be summarily executed. The benefit of these boards being, that cases would be heard as a rule on the spot; false witnesses and false cases would therefore be more easily detected. Court fees should be levied. There should be three Judges, one English and two Natives, in each division to superintend the working of these boards.

Sayad Nádir Ali Shah, Editor, *Rahbar-i-Hind.*

He agrees with Rai Múl Singh and Abdul Majíd Khán as to the popularity of village *panchayats*. He believes that they will be freely resorted to if established by Government.

He enumerates the advantages to be gained by these summary village courts being instituted. Does not think that men of learning need be appointed so long as the village people have confidence in the members of the *panchayat.*

Rája Fakír-ulla Khán, of Wazírábad.

Summary disposal of small cases on the spot beneficial to agriculturists. Class of cases referable,—damages to crops and trees up to Rs. 25; debt Rs. 20; betrothal cases; and small assault cases.

Two members, one Hindu and one Muhammadan, elected by people with consent of Deputy Commissioner to circles in each tahsíl.

Appeal within 30 days: no stamps.

Nizar Ali, Editor, *Akhbar Anjuman.*

Writes in favour of *panchayats*. Would try them first in Delhi, Lahore and Amritsar.

Punches to consist of four selected men: circles same size as zail: cases up to Rs. 10: no appeal: stamps same as in civil cases; also execution of decrees. He would pay the members Rs. 15 a month.

Mya Dass, Tahsíldár of Lahore.

He seems to think that village *panchayats* would not answer in the present day. The times are not suited to such courts as the old days were.

The members would, as a rule, be unable to read and write, and would be dependent on their moharrirs.

If these village courts are to be started, each member should be able to read and write some language, and to record his opinion in writing and sign the order given, otherwise appeal is impossible or review. If only review is allowed, the Chief Court should review: no appeal or review in any other court should be allowed.

Syad Zahúr-ud-din, Extra Assistant Commissioner.

Approves of village *punches* on the following terms:—Members to be passed men; a simple code to be framed for them.

Suits up to Rs. 30 with appeal and review; records to be kept.

Members to be approved by majority of population of circle: circle 10 miles.

If these arrangements can be carried out, it would be popular among the people.

Sher Singh, Munsiff of Zaffarwál.

Is dead against the old system of village *panchayats* being revived; thinks the agriculturists will hate them, that they will bully the people, take bribes, do injustice, and, according to his view, be worse than useless. He is of opinion that nothing better is wanted than the present style of law courts.

He attempts to refute all arguments in favour of *panchayats* by showing that more injustice than justice will be done by them, and that the people will hate them.

Burkut Ali Khán, Extra Assistant Commissioner, of Lahore.

WRITES a long-winded rambling note, the substance of which is, that he does not recommend the establishment of *panchayats* by Government, although he thinks people might be encouraged to refer their suits more than they do to the caste *punches*, as is done by dhobis, syces and others.

If *panchayats* are settled upon, he would have paid judges knowing law: pay from Rs. 25 to 50: limit of suit Rs. 10: circle 8 miles: executing their own decrees and no appeal.

Faquir Shahab-ud-din, son of Faquir Shums-ud-din.

VILLAGE *panchayats* very necessary; would be welcomed by villagers. Let the members be carefully selected, the appointment honorary, and the circles not too large. False suits will be decreased; the truth be sifted; compromises be very frequent. The suitors contented, and much of their time and money saved.

Records should be kept in a simple form. Hindus and Muhammadans be associated together on the board.

Limits Rs. 50 per suit.

Sheikh Nanuk Bukhsh, Pleader.

Is adverse to *panchayats* in the sense usually understood. Suggests, however, a paid judge with a jury in each tahsíl with summary powers and no appeal. It is no use appointing men to decide cases who have no knowledge of law; hence village *panchayats* would not be acceptable.

This paid judge would try cases up to Rs. 300, and might have sub-judges in the larger villages.

Munshi Shahamud Khán, Agent of the Begums of Baháwalpur.

ADVOCATES the revival of the old *panchayats,* appointments honorary, moderately-sized circles. The *panchayats* who work well to be rewarded with khillats. Members should be able to read and write a little; a *roznámcha* of cases to be kept: suits to be summary: no appeal: no law to be necessary: members to be guided by local custom: only to have power to hear petty civil suits.

Munshi Hukm Chand, Pleader.

GIVES a long note on the great benefit of the law courts. Condemns the village *panchayat* system. Is of opinion that justice will never be satisfied in summary suits where there is no record and no appeal; false evidence will prevail and gain the day. People will be dissatisfied, and come to the civil courts. None but paid judges should be employed with powers equal to Tahsíldár, and with appeal allowed from his order. No justice would be obtained from *panchayats*. Judgment would always go to the rich who could bribe most.

Futteh-ud-din, Edititor, *Lahore Punch*.

AGREES with Amee Chund on the expendiency of relieving the present difficulties agriculturists undergo in attending Tahsíl and Sadr courts by establishment of village *panchayats* with small circles. Thinks the appointment should be honorary, approved by people. Proceedings summary: half stamps: limit of suit Rs. 20. Is sure the movement would be popular and gratefully received.

Dr. Chetun Shah.

GIVES an opinion in favour of *panchayats,* and backs up all that Amee Chund suggests.

No. 1189, dated Lahore, 24th October 1884.

From—J. A. Grant, Esquire, Offg. Junior Secretary to Financial Commissioner, Punjab,
To—The Offg. Junior Secretary to Government, Punjab.

I am directed by the Officiating Financial Commissioner to forward, in original, a memorandum by Mr. S. S. Thorburn, Deputy Commissioner of Dera Ismail Khan, on the subject of the indebtedness of the Muhammadan agriculturists of that district.

2. Mr. Thorburn's note may be divided into discussions on three points—

(1). The extent of the indebtedness of the Muhammadan agriculturists in Dera Ismail Khan and adjoining districts.

(2). The causes thereof.

(3). The possible remedies.

3. On the first head he begins by stating that the statistics of transfers during the last five years show that in Dera Ismail Khan 39,146 acres have been sold and 27,648 acres mortgaged to non-agriculturists: the cultivated portions of these areas together forming 8 per cent. of the whole cultivated area of the district, Mr. Thorburn, however, considers that these figures understate the evil, because—

(1). the term "non-agriculturist" is vaguely applied;

(2). the cultivated land transferred is often the best land available;

(3). hypothecatory mortgages (without possession) are not generally shown.

He think the whole amount of debt owed by the peasantry in Dera Ismail Khan to Hindús aggregates at least 12 lakhs of rupees, so that at 18 per cent. the Hindús draw from the agriculturists about Rs. 2,16,000 annually as interest; and he adds that his own enquiries go to show that the following represents the general state of these people:—

13 per cent. already ruined;

10 per cent. irretrievably involved;

28 per cent. seriously, but retrievably, indebted;

26 per cent. owe no more than they could pay after two good harvests;

23 per cent. are either free from debt, or own nothing of importance.

Mr. Thorburn admits that the material prosperity of the Muhammadan peasantry has increased under our rule, but argues that this does not compensate them for ceasing to be the dominant race.

4. He then proceeds to refer to the measures that have already been adopted by the Chief Court to protect agricultural debtors, and gives it as his opinion that these have not been successful in diminishing credit (which he considers the great evil to which the agriculturist is exposed), but have weakened security and thus raised the rate of interest.

5. Before mentioning the remedies he would apply, Mr. Thorburn in paragraphs 15 to 21 discusses the causes of debt, which he divides into those which are natural or inevitable under our system of Government, and those which are preventible. In the first of these classes he places the following:—

The expansion under our rule of the good and bad qualities of the Hindú and Muhammadan races owing to the development of individualism, the result of which has been to give the Hindú the superiority.

The growth of population which has made some tracts unable in bad years to support those inhabiting them.

The failure of the wages and profits of agriculturists to increase in proportion to the rise in the cost of living.

6. Among the preventible causes he places the following:—

The fact that our law of contract and our rules of civil procedure are framed in the interest of men of business, and are therefore in advance of the position of the masses.

That our revenue system in unprotected tracts subject to fixed assessment is too rigid.

That Deputy Commissioners and Tahsíldárs are so much tied down by writing work that they are unable to look after their districts.

7. With regard to our Contract Law and Civil Procedure, he remarks specially on the shortened period of limitation which forces the creditor into court once in three years, even though the creditor may not have had within that time a fair opportunity of paying. Munsiffs too, Mr. Thorburn thinks, apply the law harshly and mechanically, while the costs which they are empowered to decree are too high.

8. Lastly, in paragraph 23, Mr. Thorburn details the remedies which he would apply. These are—

A.—The restriction of credit. He would have the peasantry treated more as irresponsible minors, and would like to try the experiment of making debts under Rs. 50 in amount non-cognizable by our courts, but feeling this latter proposal to be impracticable, he suggests the abolition of arrest for debt in the case of persons of the agricultural class unless the decree-holder first satisfy the court that the debtor is able to pay; that land and the cultivator's share of the produce of land be exempt from attachment unless specifically pledged; or that a certain minimum, to be fixed for each district sufficient for the debtor's support, should be exempted from attachment and sale.

This subject was discussed in the North-Western Provinces and Punjab in 1870—1873, and Mr. Thorburn quotes the opinions then expressed, and refers to the provision of the Deccan Ryots Act, which prohibits the sale of an agriculturist's immovable property for debt unless specifically mortgaged for repayment of the debt.

Next, he suggests a readier insolvency law for the agriculturist, under which a discharge could be given at once on payment of as much as the court might think the debtor able to pay, and a declaration of insolvency made on simple application and proof of indebtedness without a decree being suffered. He would then have the Collector manage the estate for a period not exceeding 14 years. Under such a law he thinks the Deputy Commissioner could act in many cases where the present procedure is unsuitable.

He would compel courts to "go behind the bond," and record a finding as to what portion of the debt was really principal. He would have only reasonable interest, not exceeding the amount of the principal, decreed, and he would extend the period of limitation from three to six years in rural debt cases.

His proposals include the appointment of village headmen to preside over village courts, though he fears that where the headmen were Muhammadans there would be too great a want of impartiality, and the retention of the present Munsiffs, though he would pay them and their establishments better and raise their position.

Legal practitioners, he thinks, should be excluded from such courts or paid for by the side employing them, no matter what the result of the suit. He would have a recess at the time of year when the zamíndár's presence is required in the fields, and he would forbid the sale by auction of cattle, at least in time of drought, in execution of decrees. He would allow them to be sold up, but at a price to be fixed by arbitrators.

B.—The extension to all areas, where the cultivation is precarious, of the system of fluctuating assessments prevailing on the Indus and in Mooltan.

C.—The appointment of a practical commission to examine and report on all returns, both English and Vernacular, to separate the useful from the useless, and to abolish all "fancy statistics."

Finally, he points out the danger of allowing the Hindú to assume a position of domination over the more warlike Muhammadan—a state of things which would

tempt the latter to welcome the subversion of our Government; and he urges the importance of giving relief to the peasantry before troubles arise, when it might be too late to benefit or conciliate them. Native officials of experience might, he suggests, be deputed to visit every district in the Punjab and make enquiries as to the indebtedness of the agriculturists, and action might be taken in the light of experience gained by observing the working and results of the Deccan Ryots Act. In the event of legislation being undertaken, a committee of officers who had district and settlement experience should assist in drafting the Bill.

9. The Commissioner appears to agree with Mr. Thorburn in thinking that the amount of indebtedness in the districts of the Division is serious. He does not consider that the assessments of the present regular settlements are accountable for the debts, seeing that the riverain tracts, in which fluctuating assessments have been introduced, are perhaps the most indebted part of the Deraját; but something may be due to the effect of the summary settlement. Even in a bad year, when the revenue has to be raised by borrowing, it would form but a small proportion of the liabilities which would at such times have to be incurred for other purposes. He is more inclined to attribute the partial ruin of the peasantry to the action and procedure of the civil courts. Some such measures as those suggested by Mr. Thorburn are, he thinks, called for in the present state of things, such as prohibition of sale of land for debt, restriction of interest, extension of limitation in suits to recover money lent, and exemption from attachment of things necessary for the agriculturist's livelihood. Village courts consisting of *punches* of both classes might, he thinks, be possible, and he is of opinion that the expropriation of Patháns is not so extensive as in the case of Jats, as the former class will mortgage, but will hardly ever sell. He mentions that he intends to have maps prepared showing where most land has fallen into the hands of the Hindús.

10. In forwarding these letters for the consideration of Government, the Officiating Financial Commissioner would remark that Mr. Thorburn in his lengthy note enters into the discussion of a wide range of subjects, many of which appear to the Officiating Financial Commissioner to have a very remote bearing on the indebtedness of the agricultural classes, while some of the points raised have already received full discussion, *e.g.*, as to whether it is possible to introduce a plan of assessment of land revenue varying with the season, and the desirableness of constituting rural courts presided over by village headmen. Yet, although Mr. Thorburn's note from its extreme discursiveness is heavy reading, nevertheless it seems to the Officiating Financial Commissioner to contain much matter that invites serious consideration. Colonel McMahon thinks it only necessary to make some comments on Mr. Thorburn's practical proposals for the amelioration of the condition of the peasant classes.

11. The first point to be considered is, whether the indebtedness of the agriculturists and their subsequent expropriation have in any large part of the Province gone so far as to require special action being taken in their behalf. The Officiating Financial Commissioner has been unable to discover from the Revenue Reports of former years that the subject of the transfer of land to the non-agricultural classes has been treated either by his predecessors or by Government as an alarming one. In the Report for the year 1873-74, the then Financial Commissioner even pointed out how inadvisable were all attempts to impede the transfer of property; and in the debates on the Deccan Ryots Act Mr. Thornton, speaking for the Punjab, took pains to deny that in this Province there was any occasion for such measures as were then being applied to the Deccan. Sir Robert Egerton, on the other hand, expressed an opinion at an earlier sitting that there was sufficient similarity between the Deccan and the Punjab to justify the Deccan legislation being at some future time taken as a precedent for this Province. But most of the Council agreed in affirming that the legislation then undertaken for the relief of the distressed districts of the Deccan was such as only the most exceptional state of things could justify. The distress and indebtedness there were supposed to be chiefly traceable to special causes, *e.g.*, the collapse of credit following on the fall in the price of cotton from the abnormal level it had reached during the American Civil War. The Derаját is probably, Colonel McMahon thinks, not the most indebted part of the Province,

but such debt as there is has probably attracted more attention from the fact of its having been comparatively recently contracted. In a statement contained in the Revenue Report for 1874-75 the area and percentage of land mortgaged in the several Divisions was stated to be as follows :—

			Square miles.	*Percentage.*
Delhi	...	...	142	2·5
Hissár	...	...	128	1·5
Umballa	...	...	255	6·3
Jullundur	...	...	249	5·1
Amritsar	...	...	252	4·6
Lahore	...	...	190	2·1
Ráwalpindi	...	...	202	1·2
Mooltan	...	...	430	2·1
Deraját	...	...	52	0·3
Pesháwar	...	...	148	1·8

Thus at that time the Deraját had both actually and relatively far less mortgaged land than any other Division. The case, however, is now different. The Deraját still shows less mortgaging than the older settled Divisions, but the area of lands sold under pressure of debt in that Division in 1882-83 was certainly among the largest in the Province. Possibly these satistics may not be strictly accurate, but they clearly point to a rapid increase, during late years, in the expropriation which has attracted the attention of Mr. Thorburn. Still the Officiating Financial Commissioner would expect to find such districts as Siálkot, Gurdáspur, Jullundur, Hoshiárpur, Umballa and Delhi more deeply indebted than the Deraját. He has noticed that Mr. Steedman in his Report on the Settlement of the Jhang District remarks, with reference to that district, that "good villages lightly assessed are most burdened with debt," and that "the richest circles furnish the most mortgages." Colonel McMahon is disposed to think, speaking broadly, that these remarks are more or less applicable to the whole Punjab. The very moderation of our assessments has tended as much as anything else to the indebtedness of the agricultural classes. The larger the margin of profits the greater is the credit of the zamíndár, and the greater the desire of the money-lender to get the land into his grasp. Hence the submontane districts of this Province, where crops are virtually secure, have, the Financial Commissioner believes, the heaviest load of debt. In none of these districts has the revenue been proved to be too heavy, nor does it seem to the Officiating Financial Commissioner that the revenue in any one of these districts has been collected with sufficient severity to break down the people.

12. On the whole, the Officiating Financial Commissioner doubts whether there is any reason for thinking that either in the Punjab as a whole, or in the Deraját as a special tract, any drastic legislation to meet the indebtedness of the peasantry is at present required. Nor is he inclined to blame the policy of Government in giving to the cultivators of the soil (by restricting and defining its own revenue demand) a transferable interest in the land they hold; and Colonel McMahon is still less inclined to look with favor upon Mr. Thorburn's idea that the time has come when this part of our policy should be reversed, and that the zamíndárs should be brought into a condition of irresponsible tutelage. Many reasons might be given for persevering in the attempt to teach the people self-reliance, but a sufficiently strong argument against the opposite course is to be found in the certainty that if the zamíndárs cannot manage their own affairs no official could do it for them.

13. But without making out a case for violent remedies, perhaps it may be conceded that some reform of the manner in which civil courts deal with agricultural debts would be desirable. Obstacles have already been placed in the way of grasping creditors by restricting the sale of land in execution of decree, and exempting necessary wearing apparel and implements from attachment. It may still, however, Colonel McMahon thinks, be asked whether some further extension of these provisions is not required, in order that a man in the position of an ordinary zamíndár may be protected against too severe pressure on the part of his creditor.

Mr. Thorburn's proposals to protect the person of the zamíndár from arrest for debt (except in case of fraudulent conduct), and to protect from attachment a portion of his produce, have, Colonel McMahon would observe, already been advocated by Colonel Wace as far back as 1879, in a paper in which he gave his opinion on the reform of the law of Civil Procedure, forwarded under cover of his No. 1009, dated 5th September 1879, to the Secretary to Government, Punjab; and these proposals, Colonel McMahon thinks, have much to recommend them.

14. With regard to the proposal to place restrictions on the rate of interest which a court may decree against a peasant, the Officiating Financial Commissioner would like to see the clause "at the rate (if any) agreed upon by the parties, and if no rate shall have been agreed upon" struck out of Section 2 of Act XXVIII of 1855. The section would then stand thus: "In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the court at such rate as the court shall deem reasonable." The proviso might be added: "Provided that no sum shall be so decreed as interest in excess of the rate agreed upon by the parties." The change which Colonel McMahon advocates would only involve going a little further than Section 209 of the Civil Procedure Code. This section empowers a Judge to cut down the interest payable from the date of the institution of the suit up to the date of decree to what he considers reasonable—a provision which involves a departure from the principle that the parties are to be rigidly held to their bond. In connection with this subject, paragraphs 6 to 17 (both inclusive) of the Chief Court's Circular No. XXIV (Consolidate Judicial Circulars, 1879,) should be read. The Judges of the Chief Court have, Colonel McMahon thinks, in that circular gone as far as they well could, seeing that the law is what it is, in indicating their opinion that the agreement between parties as to interest which our courts are called upon to give effect to are inequitable and tainted with over-reaching and fraud. It is very difficult for a court to obtain evidence of fraud such as would satisfy an appellate court, and it seems to the Officiating Financial Commissioner that it would be a move in the right direction were our courts left to deal with suits on agreements bearing interest on the principles of equity and good conscience, rather than be fettered by the provision of Section 2 of Act XXVIII of 1852.

15. Colonel McMahon does not think the alterations proposed by Mr. Thorburn in the Insolvency Laws are expedient. Insolvency Laws are not, he thinks, quite applicable to the case of agricultural debtors. Under every system of insolvency procedure the debtor has to surrender all he possesses, and this is by no means what an indebted cultivator is prepared to do. He wishes, on the contrary, to retain the land on which he lives, although, as a rule he is willing to pay annually as much as he can up to the margin of subsistence. Futher, it is essential under most systems of insolvency that the insolvent should satisfy the court that he has not acted recklessly, and is therefore entitled to the protection of the law. Colonel McMahon doubts whether many zamíndárs could be able to show that they had acted with ordinary prudence. And he is unable to see the justice of declaring a debt cleared off by the payment of interest thereon for a certain number of years, be it 7 or 14 or 20.

Mr. Thorburn's proposal amounts to no less than this: for the annual instalments which he proposes to demand from an insolvent peasant would ordinarily amount to no more than the equivalent of the interest annually due on the principal debt.

16. The Officiating Financial Commissioner also concurs in the suggestion that the period of limitation in suits for money due should be changed from 3 years to 6. As this point, however, was fully discussed by the Honb'le Mr. Hope when introducing the Deccan Relief Bill, Colonel McMahon thinks it will be sufficient to refer to pages 852, 853 of the Supplement to the *Gazette of India* of 2nd August 1879, where Mr. Hope's remarks on this subject will be found. He thinks he need only add that in conversation with intelligent agriculturists in the course of the winter tours, he found that a general consensus of native opinion exists to the effect that the reduction of the period of limitation for suit for debt has operated very prejudicially to the interests of the cultivator.

17. There remains the question of prohibiting the sale of ancestral revenue-paying land in execution of decrees for debt. The policy in the Punjab has always been to discourage such sales, and Mr. Thorburn suggests that land unless specifically pledged should, when held by Muhammadan agriculturists, be exempted from sale in execution of a decree either altogether or in part, the maximum which should be saleable being fixed for each district. This proposal, in the Officiating Financial Commissioner's opinion, has been carried too far by Mr. Thorburn, and as it stands is open to serious objection. The exemption of agricultural land from attachment and sale would tend to limit the credit of zamíndárs, and so reduce their temptation to borrow for domestic ceremonies ; but it is open to question whether the agricultural community would be really benefited by the introduction of a rule such as that proposed by Mr. Thorburn. With the decline of credit the rate of interest could not be prevented from rising, and the execution of a deed of mortgage would be made by the money-lender a condition precedent to the advance of cash. The Officiating Financial Commissioner sees no necessity as yet for the introduction of so drastic a remedy into the Punjab, and he thinks that the result of the special measures experimentally introduced into the Deccan should be awaited.

18. In conclusion, he would ask the permission of Government to print and circulate this memorandum with a letter expressing the Financial Commissioner's own views on the points raised, and take the opinion of all Revenue Officers, and of some who have had judicial experience too, on the expediency of adopting the three proposals of Mr. Thorburn, which seem to the Officiating Financial Commissioner to be at present reasonable, *viz.*, to abolish ordinary imprisonment of zamíndárs for debt ; to exempt from attachment either the whole of the cultivator's share of the produce, or at least enough grain and fodder to support the zamíndár's family and necessary cattle till next harvest; and to extend the period of limitation in rural debt suits from 3 years to 6. These provisions for the mitigation of the harshness of distress by law are, Colonel McMahon thinks, demanded by native feeling on the subject, as shown in the paper by Colonel Wace already quoted ; and though they could not, as involving modifications of the Civil Procedure Code and Limitation Act, be ordered by the Local Government on its own authority, still it might not be difficult to induce the Legislature to accept them. In any case, the Officiating Financial Commissioner thinks the matter ought not to be refused a chance of being discussed. He would not, however, accept Mr. Thorburn's proposal to appoint an itinerant commission of enquiry, as it might tend to arouse large expectations and apprehensions, and might be administratively inconvenient.

No. 242, dated 15th July 1884.

From—Lieut.-Colonel E L. OMMANNEY, Commissioner and Superintendent, Deraját Division,
To—E. B. FRANCIS, Esquire, Junior Secretary to Financial Commissioner, Punjab.

I HAVE the honor to submit a copy of Mr. Thorburn, Deputy Commissioner, Dera Ismail Khan's No. 450, dated 9th instant, submitting a long and interesting note prepared by him on the indebtedness of Muhammadan agriculturists, with suggestions for arresting the process of expropriation now proceeding. This note is forwarded in original—a demi-official received yesterday. The Deputy Commissioner is anxious that it should be sent on at once, which is done consequently. My remarks are very brief.

2. In my revenue and land alienation reports the existence of this agricultural indebtedness and creation of an expropriated class ready for a change have been briefly noticed.

In 1879, in Hazára, when the action of the money-lending class through the Civil Courts had exasperated the agricultural community to such an extent that the relations between the two had become greatly strained, I issued instructions liberally interpreting the law regarding attachments, which soon had the effect of allaying the excitement.

The indebtedness of the agricultural class in this division, the murder of one or two Hindús in each district, manifestly on account of their grasping

and usurious dealings, and the number of suits by money-lenders against agriculturists led me in the early part of this year to address the Deputy Commissioners, forwarding suggestions for the Civil Courts to be acted up to as far as they were in accordance with the law, *viz.*, to check claims for exorbitant interest, to fix instalments at time of decree, to exempt food and seed grain, &c., from attachment. In the spring of the year before, I think, I mentioned the indebtedness of the riverain villages to the Deputy Commissioner.

3. The question of agricultural indebtedness and how to alleviate it, and help the agriculturist is a very wide one, affecting all India more or less, and has offered and is presenting difficulties in other countries. Our rule defining and securing rights in land has made the land a very valuable property, and the money-lending class and others with money like to invest in it naturally enough; but the proprietors, as a rule, are quite as anxious to retain possession and only part with their lands when hopelessly involved in debt.

4. Whatever may have been the effect of over-assessment in previous summary settlements in impoverishing certain tracts and placing a burthen of debt on the people, the present regular settlement cannot apparently have that effect, for it is light, and to meet the conditions of certain tracts, it is only levied on area cultivated; the riverain tracts of Bhakkar and Leiah in which the harvests are certain and which have the most elastic and simple system for the payment of the revenue is about the most indebted part of the country, owing in part to old debts caused by over-assessment and to the system of heavy grain interest transactions that prevail here, as it appears to have done in Oudh (Selections from Records, Indebtedness of Cultivators, Oudh, 1868-69) and exists, no doubt, in many other parts of the Punjab and India. In bad seasons the light revenue would go to swell the amount of debt incurred for food, clothes, and maintenance of man and beast, but it would be a small proportion of the liabilities that would have to be incurred under such circumstances.

5. The Civil Court appears to be the institution that in many cases brings death to the decree-holder, ruin more frequently to the agriculturists, judgment debtor and danger to the State. Some such measures as are suggested in the note seem to be required, *e.g.*, no sale of land for debt by decree of Court; no imprisonment for debt; restriction of interest; extension of limitation to six years in suits for debt; the maintaining of the agriculturist judgment debtor, free and able to work at his calling, by liberally exempting from attachment and sale his property of all kinds necessary for his agriculture and livelihood, *e.g.*, amongst other property, in Marwat, donkeys, and, in the Pachod or sub-montane dry tracts of the Dera Ghází Khan district, camels, both employed for bringing drinking water, would have to be exempted from attachment.

6. Even liberal exemptions from attachment and restriction on interest alone would place the agriculturist in a much stronger position than he at present holds. Why should not grain interest be stopped entirely, only cash up to a certain rate allowed? or if grain is allowed only to be charged for once and the account made up.

7. It might be possible in time, perhaps, to start a system of Honorary Village Civil Courts by selecting and forming benches of village notables of both classes for large villages or clusters of villages, to be empowered to try small suits of, say, Rs. 50 or up to Rs. 100; the times of their sittings to be arranged so as not to interfere with the important agricultural work at seed time and harvest.

8. As regards the expropriation of the Muhammadan proprietors, the evil is one that requires a remedy, but it is doubtful whether the Patháns communities have parted with their land to any extent, they will and do mortgage freely, but do not care to sell out-right; so probably it would be found that of the three districts in this division, the Hindú banker has obtained the least in Bannu, and that in Dera Ismail Khan, he has acquired more from the Ját communities, Cis-Indus and in Dera Ghází Khan in the neighbourhood of the towns. I will ask Deputy Commissioners to have maps prepared showing by stated colours the localities where Hindús are landed proprietors, this will be interesting in the present and useful at a future time by way of comparison.

NOTE by S. S. THORBURN, Esquire, Deputy Commissioner, Dera Ismail Khan, dated 29th June 1884, on the causes of the general indebtedness of agriculturists in the Muhammadan districts of the Punjab, more particularly in the Deraját Division, together with suggestions for reforms in the existing law and revenue system with a view to arrest the process of expropriation now proceeding, and to preserve the possession of the land to its hereditary occupiers, the Muhammadan peasantry.

Subject stated; conclusions arrived at as to agricultural indebtedness and its consequences.

* Punjab Government, Foreign Department, No. 9, June 1883, subject as stated.

THE attention of Government having been recently drawn to "the increase of alienations of land in the Deraját," * I have lately occupied my leisure in investigating the causes of the indebtedness of the agricultural classes throughout this Division and in considering remedial measures. The conclusions to which I have arrived are—

(1) that the indebtedness is general and much in excess of what is inferable from statistics;

(2) that it is largely ascribable to preventible causes; and

(3) that without fundamental changes in the existing law and revenue system, the great bulk of the peasantry of the Deraját and probably also of the Mooltan Divisions must, in unprotected parts of scant and uncertain rainfall, inevitably sink down into the position of tenants-at-will and day labourers to the money-lending class, Hindús, and to the few Muhammadan land-owners whom the favour of Government, as expressed in pensions, *jágírs, ináms* and *máfis*, coupled with in the first instance their own intelligence and self-denial, has insured against calamities of season.

Objects of this paper stated.

2. The cultivating classes in the two Divisions being Muhammadans comprising 71* per cent. of the whole population, and being, under all conceivable circumstances, the dominant race, their subjection to the weak and unwarlike moneyed classes would cause disaffection, to be followed by insurrection on opportunity. A handful of foreigners as we are, ruling a vast Empire, we are not in a position to put ourselves out of sympathy with the majority of the inhabitants of any considerable region of the Empire. I therefore assume that just and benevolent though our laws and system are for the thrifty and educated, Government will, in self-interest, alter those laws and that system, should they be proved to be too far in advance of, or unadapted to, the intelligence of the masses. The task then I set before myself in the following paper is—

(1) to show the present economic condition of the Muhammadan peasantry of this district;

(2) to trace the causes which have evolved that condition; and

(3) to suggest measures of relief by which those causes may be removed.

Although I have administrative experience of all three districts of the Division, and conducted the first regular settlement of the Bannu District, I purposely confine my remarks, in the first instance, to this district, in order to keep the inquiry within due limits. But what is true of this district will probably be found to apply equally to all tracts in the Punjab similarly circumstanced.

The population of the district given; inter-relationship of ruling power, Muhammadans and Hindús, up to annexation sketched.

3. Using round numbers the present population of the district amounts to nearly $4\frac{1}{2}$ lakhs, thus—

Muhammadans ...	Patháns and Bilochís	... 136,000, or	31 per cent.
	Jats	... 205,000, or	46 ,,
	Miscellaneous Muhammadans ...	44,000, or	10 ,,
Hindús	... ...	... 56,500, or	13 ,,
	Total ...	... 441,500, or	100 per cent.

It was about a lakh fewer at annexation. Probably the ratio of increase through-

* This percentage is thus obtained: I have deducted the whole of the Hindús and 15 per cent. from the Muhammadan population, as about that percentage have no interests in the land. The balance is 71 per cent. of the whole population.

out the various elements composing the population has, under British rule, been pretty equal. Perhaps, however, it would be fair to assume that as the Hindús have benefited most by their change of masters, they have multiplied more rapidly than the Muhammadans. Statistics, however such as they are, do not support such an assumption. At annexation, then, the population was 3½ lakhs. Trans-Indus, the Patháu tribes dominated all the country except the extreme south, in which the Bilochís were strong. The dominant clans generally left cultivation to the Jats, who, though very numerous, were never masters Trans-Indus. The Hindús were mostly concentrated in the best protected towns and villages, and were occupied, as now, in trade. They lent money doubtless freely, but, owing to the absence of security, and to their dependent position, never dared to proceed to extremities with a debtor. Under such circumstances credit was very restricted. Cis-Indus, here and there, Biloch and Pathán families were all-powerful, but generally the country was held by strong Jat communities. The Sikhs too had a good grip of the Cis-Indus tracts, owing to which the position of Hindús was better there than it was Trans-Indus. The security being fair, credit was freer. Accordingly we find that the mortgages on many of the old Thal wells date back to pre-annexation days. Both Cis- and Trans-Indus the popular voice expressed by its recognised representative, whether general assembly, council of elders, chief or headman, was all-powerful in the regulation of all matters of interior government. When the State, whether Sikh or other power, was strong enough, revenue in kind, or commuted into cash, was paid. But beyond exacting its share, the State left each community to manage its own affairs, and in every case the community collectively was the unit. Each individual entity in it had entirely to subordinate his aims and actions to the will of the many, or to seek an asylum elsewhere. Cis-Indus throughout the Thal there were no communities properly speaking, but groups of more or less isolated wells loosely interconnected in matters of common interest. In such a region there was ample room for Diwán Sáwan Mal to follow his usual policy of appropriating unoccupied land, and allotting it to any one who could and would sink a well and cultivate it.

British rule destroys community of interests, creates individuality, and disintegrates society.

4. The advent of British rule and order was followed by a gradual shaping, defining and recording of personal rights. Almost from its outset we acted on an assumption which is only true for the Hindú section of the population and for a few Muhammadans of exceptional shrewdness, self-denial and force of character. We assumed that all classes must know their own interests best, and in their furtherance show thrift, intelligence and a desire for knowledge. We know now that such an assumption was erroneous, and that the acceptance of any change is like the growth of an exotic transplanted to an uncongenial soil—a plant of particularly slow growth in the East. Individuality was created and fostered to the destruction of the old bond of community of interests. The agricultural unit ceased to be any longer the clan or village collectively, but the individual. The elevation of personal interests and personal independence to a high place amongst the virtues has done more to disintegrate native society than any other direct consequent of British rule. The extinction of all necessity for regarding the common before the individual good is to this day deplored by agriculturists. His indebtedness to his former dependents and the centrifugalism,—if I may so term the force at work,—of his brethren are felt by him to be grievances ascribable to our rule. Whilst acknowledging the benefits which that rule has conferred, and admitting that, in native times, the country was at best *Yághistán* (a place of strife), the Nestor will sum up his conclusions by saying—"After all before the *ráj* of the *Sáhiblog* we helped each other; we had to: now brother robs brother, and the Karár us all." Whilst acknowledging that the change from community of interest to individual self-interest was the natural consequence of the freedom and security created by a strong settled Government, I think that it was a grave mistake on our part to suddenly leave individuals absolutely uncontrolled, who had formerly been entirely controlled by their best selves, their elders, &c. Like minors, all at once entrusted with the disposal of their property, they immediately began to squander it.

All evils hopelessly ascribed to "our system;" n old revenue paradox examined.

5. Many of the officials in most direct touch with the people early saw the error which was being perpetrated; but those who did remonstrate were over-ruled by their superiors, and so we drifted on, making and applying laws, rules and regulations to the whole Punjab as if it was inhabited by a homogeneous, intelligent and aspiring people. Remedial measures were not attempted. All evils which were detected were attributed in a hopeless sort of way to "our system," as if "our system" were some disease from which escape was impossible. That levelling system, under which all men are equal and assumed to know the law, has much to answer for. Under it the revenue paradox became stereotyped, that with fixity of demand and light (?) assessments the surplus of good years would meet the deficiencies of bad years. It ought to have perhaps had the revenue-payers possessed some capital in hand to start with and had they been provident. Unfortunately they neither had capital nor were they provident. An agricultural people who are fatalists by religion, whom poverty constrains to live from hand to mouth, whom custom and nature impel to early marriages, whose lands yield little or nothing for two or three consecutive years and then a bumper crop in the next, must antecedently be improvident and unadapted for fixity of demand.

Introduction of fixed cash assessments in unprotected tracts a mistake.

6. The general substitution of fixed cash assessments for a share of each crop paid either in kind or commuted into cash, as is still done in directly held estates, was one of the most unfortunate changes introduced by us. Suitable enough perhaps in the North-Western Provinces, and in those parts of the Punjab which produce fair crops with annually recurring regularity, it was totally unadapted for the arid unprotected regions of the Punjab which depend for their crops on a fitful rainfall of a few inches in the year, the uncertain freshets of hill-torrents or the vagaries of the Indus. In this district when the change to fixed cash assessments was made, Cis-Indus the superior proprietors generally engaged, and a large number of villages in the Leiah tahsíl were speedily plunged into a state of indebtedness from which they are still suffering. Trans-Indus the Gundapur Patháns of Kuláchi and the mixed communities of Tánk largerly refused to engage, in consequence of which either farmers were put in or the system of direct management was maintained.

Changes introduced by "our system" grouped under three heads.

7. To sum up then. The changes inevitable to a large extent, but none the less regretable, introduced by "our system" were—

(*a*) the creation and fostering of a spirit of individual self-interest as opposed to that of the community at large;

(*b*) the ruling of the masses by laws in advance of their state of progress and requirements, and only suited to a very small and politically unimportant class amongst them;

(*c*) the substitution on an erroneous theory of fixed cash assessments for payments proportionate to each crop's yield.

"Our system" shown to be a direct incentive to reckless borrowing. Mr. Lyall's despondent view of the future quoted.

8. The first two of the three changes just enumerated gave the lender security and only limited the borrower's credit to his last asset. There could be no doubt as to what the result would be: on the one side, astute, grasping Hindús, men of business almost from the cradle, with all their wealth locked up or buried in their shops; on the other side, a stupid, ignorant Muhammadan peasantry, with an upper class composed of proud, thriftless Pathán, Biloch and Syad proprietors, and all handicapped by fixity of demand (where introduced) and uncertain seasons. Under such circumstances the Muhammadan naturally used his credit freely* and plunged into debt, either unavoidably, as after several seasons of vain sowings and no returns, or, as in

* See para. 169 of Mr. Steedman's Jhang Settlement Report. He begins his condemnation of a part of our system by writing as follows:—

"Our system of revenue collection is to some extent answerable for agricultural debt, but the real and true cause of all our woe was the mistaken and misplaced gift of full transferable proprietary right in land to the cultivator, and with it of a vast credit only limited by the value of that proprietary right.".

I only agree with Mr. Steedman in his remark about credit.

the case of his upper classes, with a light heart in order to preserve the family "honor" and reputation for hospitality. Meanwhile the baniah plied his debt-encouraging trade on purely business principles, and proved an accommodating creditor until his victim's security was exhausted, or until a period of drought pointed out to him that the time for a full settlement of account had come. Unlike the Sonthals of Orissa or the Deccan ryots, the Muhammadan's fatalism has hitherto made him accept ruin as a decree of heaven. Until the Settlement Officer appeared in the three districts of this Division (say 1868 to 1878), I do not think that the distressed state of the Muhammadans in unprotected tracts was ever represented with due insistance to the superior officers of Government. Agricultural indebtedness was then attracting a good deal of attention throughout India; but the natural conservatism of Indian officials, the strength of the old dogma that the surplus of good years would compensate for the deficiencies of bad years, and perhaps the timidity with which officers of position suggest sweeping changes from fear of being regarded as "unsafe" men and so damaging their prospects, all combined to deter those in authority from facing the position, working out the economic process then in progress to its logical consequences, and urging drastic measures of relief. Modifications in the existing law, which I am inclined to regard as weak palliatives of doubtful good, to be discussed further on, were introduced, and that was all. The state of mind with which our best revenue official viewed the change then in progress can well be illustrated by quoting Mr. Lyall's own words, written apparently *apropos* of an opinion advanced by Mr. Tucker, the Settlement Officer, that many of the small Muhammadan proprietors Cis-Indus would have eventually to be sold up on account of their indebtedness:—"All we can do," wrote Mr. Lyall,* "is to amend anything in our revenue system which tends to hurry on the process. Only a minority of these men (*i.e.*, Muhammadan proprietors) have proved fit for the improved status which we give them; the majority will descend in time into the position which suits them, of mere tillers of the soil, with enough to live upon, but no credit to pledge and no property to lose. Their original position under Native Government was little better than this. It is of course the too frequent elevation of the despised Karár, or Hindú money-lender, over the heads of a naturally dominant Muhammadan population which is the worst part of the change." Whether Mr. Lyall at the time was referring to Muhammadan proprietors generally or only to some classes Cis-Indus matters little, because his sentiments must apply *a fortiori* to Patháns, Syads and Bilochís, as all such are worse husbandmen and more improvident than the Cis-Indus Jats. I shall have more to say on this subject further on. I here only draw attention to Mr. Lyall's concluding words to effect that under British rule the pre-annexation position of Hindús and Muhammadans is being reversed, the "despised Karár" becoming the master of his old master, the warlike Muhammadan. The grave political danger of permitting such a reversal of position to be consummated will receive comment in its proper place.

* Page 374, para. 704, of Mr. Tucker's Settlement Report.

9. I have now so far advanced my subject as to be able to examine the present economic condition of the Muhammadans of this district. I shall avoid figures as much as possible, because the widespread indebtedness of Muhammadan proprietors throughout the Division is practically admitted and is known to Government. The correspondence on the "increase of alienations of land in the Derаját," alluded to in my opening paragraph, shows how alive to the importance of the subject both the Local Government and that of India now are.

Increase of alienations of land in this district particularly since settlement.

The pregnant sentence marginally quoted occurring in paragraph 3 of Mr. Tupper, Junior Secretary to the Government of the Punjab's No. 666, dated 12th July 1882, shows that the Government of the Punjab is determined to probe the "general causes" which are bringing about a great and dangerous agrarian revolution to their inmost depth, and is prepared to deal with the question with the seriousness it demands. I have therefore been encouraged to prosecute my investigations into a subject which has thoroughly interested me since the time when, as a Settlement Officer, I learnt to sympathise with the anxieties which daily beset

"But behind all this their must be general causes at work, and it is necessary that these should be ascertained before a final report can be submitted to the Government of India."

the life of the Muhammadan peasant, whether cultivating tenant or proprietor. The correspondence alluded to shows that for many years past and *particularly since settlement*, * the area of land recorded in the annual papers as alienated by sale and mortgage, the number of transactions and the money involved, have been progressively on the increase. Comparing 1882-83 with 1883-84 the transfers were for this district as follows :—

Year.	Class of alienation.	Area Transferred.				Amount in acres.
		Under pressure of debt.		*Otherwise.*		
		To Agriculturists.	To Non-Agriculturists.	To Agriculturists.	To Non-Agriculturists.	
1882-83 ...	Sales	19,332	4,334	1,240	...	24,906
	Mortgages	34,544	51	538	...	35,133
1883-84 ...	Sales	16,164	11,979	1,542	92	29,777
	Mortgages	59,186	5,395	465	...	65,046
Difference	Sales	−3,168	+7,645	+302	+92	+4,871
	Mortgages	+24,642	+5,344	−73	...	+29,913

In his Revenue Report for the Division the Commissioner shows that a similar increase is observable in the other two districts of his Division, and attributes it to long drought in these regions which is still continuing. † The bulk of the alienated area occurs in this distrct, in those tracts which depend most on rainfall for a crop. Doubtless in other districts the least secured tracts have also been most affected.

According to the statistics of transfers the total area now held in this district by non-agriculturists under sales and usufructuary mortgages effected or recorded in the last five years is as follows :—

	Area in acres.	Remarks.
Under sales	39,146	At least 80 per cent. of this area is cultivated.
Under mortgages	27,648	

Comparing the cultivated area so held with the total cultivated area of the district, it is only rather more than 8 per cent. This comparison is of little value, as—

(1) the term "non-agriculturists" is vague, and excludes many Hindús; ‡

(2) the cultivated land transferred is generally the best land available. A creditor does not care to be put in possession of poor land;

* If this phenomenon is generally observable, as I believe it will be, it is evident that the additional security given by the more exact definition of rights contained in the settlement record of rights has increased the borrowing powers of agriculturists, and that they have yielded to the further temptation thereby created. In this district I believe I am correct in stating that the fewest mortgages and sales to outsiders exist in the tract known as the Gundapur Pradu lands, and that one reason is that the tenure is so complicated and the tribe so strong that a Hindú is afraid to risk his money there. A concurrent reason also may be, that, after deducting cost of cultivation and the Government share of the crops,—for the country is held under direct management,—little would remain for an outsider in most seasons [*see* foot-note (1). paragraph 17].

† Parts of the district have been relieved by the fall of two good showers since the 9th instant.

‡ What was meant by "non-agriculturist" was carefully explained in Financial Book Circular No. XXIII of 1881, *viz.*, that "men belonging to castes which usually live by trade and money-lending should be classed as non-agriculturists even when they own or cultivate land, &c., &c." But I find that even now many Revenue officials appear to think that a money-lender when once he becomes a revenue payer *ipso facto* becomes an "agriculturist." The distinction between "agriculturist" and "non-agriculturist" would, I think, be liable to fewer mistakes if it followed castes entirely, and this, I think, was intended by the 1881 Circular. I have now ordered that in this district all Muhammadans be classed as "agriculturists," and all Hindus as "non-agriculturists." This will simplify matters and minimise errors, I hope. Even Gannu Khán (substitute title of honor for Rám), the oldest Hindú landed proprietor Trans-Indus, does a great business as a money-lender.

(3) hypothecatory mortgages are generally not shown in the statements of alienation of lands.

This latter fact is of such importance that it deprives sale and mortgage statistics of much of their value.

How debts paying interest in grain at harvest time escape registration and grow into mortgages.

10. The common way in which a poor Muhammadan gets involved in debt is as follows :—He has in every case a running account with his baniah. This is generally settled after each harvest, which is thus largely discounted before ripening. He pays his way fairly enough, until sickness, death of oxen, a death in his family, the failure of his crop, a case in court or other accident occurs. He then writes a bond bearing interest either in cash or grain ; and once having done so, self-denial and the luck of several good seasons are required to extricate him. The chances are that he becomes more and more involved. Even so the creditor will not proceed to extremities so long as his debtor works for him like a bondsman. Death or working incapacity sooner or later strain or break the *quasi*-amicable connection which has hitherto existed between debtor and creditor. A willing slave being better as a cultivator for the creditor than an outsider, the debtor is frequently left in occupation. This arrangement suits both parties best, even though the creditor be a usufructuary mortgagee. But there is an intermediate stage between indebtedness involving the alienation of landed property and merely a serious debit with the baniah. At this stage the debtor signs and renews bonds and agrees to pay interest in kind at harvest time, either a share or a measure of the crop.* He thus discounts the next harvest at a higher and higher rate, until he becomes, in many cases, the mere slave of his creditor. Tenants even, particularly on well lands and in the riverain tracts, freely borrow seed grain, repaying the loan in grain at harvest. Many of those cases in which interest is paid in kind are technically hypothecatory mortgages, but few such are recorded in the mutation registers. As the cultivator's status is not apparently altered, attention is not drawn to the transaction until debtor and creditor disagree. In many cases the latter pays a portion of the revenue, greater or smaller, according to his share in the crop. Such cases too largely escape entry. In fact, the mortgages which are entered are mostly usufructuary, although the commoner form is either hypothecatory or one in which a share of measure of the crop is surrendered as interest on the money or grain lent.

Statistics shown to be unsatisfactory. Amount of district indebtedness estimated.

11. However faulty they may be, statistics of alienations by sale and mortgage, whether recorded in the Registration or in the Revenue Department, or in both, demonstrate that the process of transfer of marketable rights in land from the agricultural to the non-agricultural classes is progressing at an ever accelerating pace in bad years in this and in other districts. Argue, as officials may and do, that such alienations are signs of prosperity or of poverty, or of the natural and healthy progress of a country under a strong and settled Government, the following are facts from which only one conclusion can be drawn. Those facts which apply equally to all unprotected tracts, and more specially to those occupied by a Muhammadan population throughout the Punjab, are—

(1) our statistics fall short of the truth even in respect of sales and usufructuary mortgages ;

(2) hypothecations and cases in which a portion of each crop is surrendered as interest by peasant proprietors and by inferior cultivators such as occupancy tenants generally escape registration ;

(3) transferees of non-agricultural stock are frequently entered in the returns as agriculturists ;

(4) no statistics show or can show the true state of agricultural indebtedness over and above that which finds expression in sales and usufructuary mortgages ;

* See a description under heading "Rates of interest" from Mr. O'Brien's Muzaffargarh Revenue Administration Report, 1878-79, published in the Provincial Report of that year ; also see Mr. Steedman's Jhang Settlement Report, paras. 88 and 89, on *lekha muhhi* debts.

(5) the sum total of that agricultural indebtedness represents a huge amount, probably not less than 30 lakhs of rupees, or say, five years' purchase of the whole land revenue of the district. *

Taking statistics plus facts known to all officers in constant touch with agriculturists, the one conclusion to which they point is that the time is reasonably near when quite three-fourths of the old agricultural classes of the country will have no rights in the land they cultivate superior to those of tenants-at-will.

Estimate and examination of Muhammadan indebtedness continued: amount of interest annually paid by Muhammadans to Hindús.

12. Let me examine the position a little for this district alone. Broadly speaking, all Muhammadans are agriculturists and Hindús non-agriculturists. Deducting 20 per cent. from the former for non-cultivating herdsmen, handicraftsmen, *kamíns* and Government and private servants,† the number of agricultural Muhammadans in the district by the 1881 census is 308,195. Similarly, allowing a deduction of 33 per cent. on the Hindú population to represent those who are not owed money or grain by Muhammadans, we have a balance of 37,603.‡ Now, those 37,603 Hindús derive a large part of their incomes from the crops raised by the 308,195 Muhammadan cultivators. Those Hindús were presumably poor upon annexation; they are now comparatively rich. By superior thrift and astuteness, and by the possession of a little capital to start with, they have, in a period of 35 years, acquired a large capital from the Muhammadans of the district, and by lending it out to them, in various ways, obtain from 12 to 24 per cent. annual interest upon it from them, and with each year's available balances are extending their investments in land or in the produce of land. In effect they, harvest by harvest, divert in grain and cash from the Muhammadan cultivators of the soil an annually increasing proportion of the produce of that soil. My inquiries lead me to believe that, excluding the 5 to 8 lakhs of petty debts, most of which could be easily paid off after any average harvest, the debts at present owed by Muhammadans to Hindús in this district amount to between 12 and 14 lakhs of rupees. Taking the lower figure of 12 lakhs, the annual interest on it is not less than, on the average, 18 per cent., or Rs. 2,16,000.§ The true state of the indebtedness of the agricultural population of this or any other district will only be disclosed when a debt commission be appointed, and ascertain publicly at his home in typical villages in each locality the debt owed by each hereditary agriculturist. The process is not difficult. I have myself carried it out in some villages in the Bannu district. So far as my inquiries have gone, they warrant a conclusion that the following table is no exaggregation of the truth:—

Percentage of Muhammadans.	State of indebtedness, if any.
13	Already ruined.
10	Irretrievably involved.
28	Seriously, but retrievably, involved.
26	Would be free with two good crops and a little thrift.
23	Owing nothing, or if anything, under Rs. 50 and easily able to pay it.

* This sum is distributable thus—

Debts of leading Nawábs and Raíses	2½ lakhs.
Do. of lambardárs	6 ,,
Do. of other non-self-cultivating zamíndárs	6½ ,,
Do. of self-cultivating proprietors and occupancy tenants	12 ,,
Petty debts from 5 lakhs to	8 ,,

Somewhat more than half of the money owed, excluding the 5 to 8 lakhs of petty debts, I should say is owed to Muhammadans; 65 per cent. say to the 25 to 30 energetic leading men of the class described in para. 1; and the rest to shrewd frugal *zamíndárs*, of whom one or two are to be found in many villages.

† In para. 21 only deducted 15 per cent. on these accounts, as the estimate made there was for the whole Mooltan and Deraját Divisions. I allow 20 per cent. here for this district, as varions Powindahs and other Muhammadans, entirely graziers or traders, have to be taken into account, who presumably form a smaller percentage in other districts.

‡ No Hindús are "agriculturists" in the sense meant in Financial Commissioner's Book Circular No. XXIII of 1881, quoted in a foot-note to para. 9.

§ Taking 37,603 as the number of Hindús who "derive a large part of their incomes from the crops raised by the 308,195 Muhammadan cultivators," and estimating each Hindú family at 4½ persons, the Rs. 2,16,000 when divided amongst 8,356 families only gives Rs. 23-8 for each family in the year. As the average income of each such family will not be less than Rs. 150, I consequently only estimate a little over one-sixth of it as derived from the land. This is very moderate.

Increase in material prosperity of this district even though shared in by agriculturists not inconsistent with loss of status.

13. In all that I have hitherto written I have, to the best of my ability, endeavoured to rather under-than overstate what I believe to be facts. That I am no pessimist, but rather the reverse, a perusal of paras. 67 and 68 of my Bannu Settlement Report will prove; but in those paras. I seem to have omitted to take into account the state of the agricultural population of the Miánwálí, Thal and Mohar tracts, now, I believe, in very depressed circumstances. I also hoped that the extreme moderation of my Trans-Indus assessments would eventually free most deserving debtors from their embarrassments. I acknowledge that the material prosperity of this district is greater than it was before annexation. The value and quantity of gold and silver ornaments worn by Hindús, men, women and children, at festivals, *e.g.*, the Baisákhi, cannot but strike strangers with the comparative wealth of that intelligent and frugal people. Then as to Muhammadans, they eat better, dress better, have more metal vessels in their houses than before annexation. What Mr. Lyall remarked in the quotation made in para. 8, *viz.*, "the majority" (of the Muhammadan proprietors) "will descend in time into the position, which suits them, of mere tillers of the soil with enough to live upon, but no credit to pledge and no property to lose. Their original position under Native Governments was little better than this,"—is perfectly true in one sense. But we shaped and defined the rights of those Muhammadan proprietors. We gave them landed status, and taught them to value it, and they are losing those rights and that status in consequence of "our system," and whether in a material sense they are as well off now as under Native Governments, or even better off, is a side issue only, because, besides being materially poorer to-day than they were, say, twenty years ago, they are also worse off in this important respect, that they were under native Governments members of the dominant caste, or connected with it at all events, whereas now they are becoming servants of the then dependent and still despised caste. Again, in years of drought before annexation the Muhammadan cultivator could easily save himself and cattle by migrating elsewhere, but now, through the increase of population and the recording of rights, vested and well-protected interests everywhere shackle his freedom of movement and obstruct or forbid free squatting and free selecting even of a temporary nature. Though too it is true that the "cultivated area" is double* what it was at annexation, and that the population has not increased at a similar ratio, still the ratio of increase between the two can only be usefully compared in generally good and average years. In the frequently recurring years in which crops are confined to protected localities, the extra lakh of mouths to be fed find no food in the extra two lakhs of acres of "cultivated area." All these are considerations which detract much from the value of what is, in one sense, a truism, that the cultivating class is no worse off now than it was under native rule.

Empowering and positive measures of relief adopted of late years stated and examined.

14. Of late years much has been done to relieve insolvent debtors. Measures with this object may be divided into positive and empowering. Of the former class, the most important is contained in Section 266 of the Code of Civil Procedure (Act XIV of 1882), which exempts from attachment and sale wearing apparel, implements of husbandry, plough and well bullocks, the materials of a cultivator's house, &c. The object of the exemptions is clearly to leave the judgment-debtor the means of subsistence. This being so, I think that sufficient land for his support, seed grain for that minimum of land, and food grain to save him and his family from starving until the next crop should be ripe, should also have been specifically exempted. The empowering clause has a wider range. It authorises courts to decree payment of a debt "by instalments and without interest" (Section 210); to satisfy decrees by the temporary alienation of land (Section 326). The Collector may also be empowered to execute certain decrees, avoiding, if possible, an execution sale (Section 320--325), and no such sale, if of hereditary or jointly-acquired land, †) can be made without the sanction of the Chief Court. In addition to the above modifications in procedure, courts are encouraged to

* See Mr. Tucker's Settlement Report, paras. 585 and 595 for Cis-Indus. Trans-Indus there where no measurements, but presumably cultivation has increased more Trans than Cis-Indus.

† When not so, sanction of Commissioner is sufficient—See Punjab Government Notification No. 3859, dated 3rd October 1877.

look behind the terms of an agreement and to decree only reasonable interest in cases in which it may appear that the "agreement has been entered into through fear or ignorance" (Consolidated Judicial Circular No. XXIV of 1879). Following the lead of the Chief Court some Commissioners and Deputy Commissioners no doubt bring their influence to bear on the Civil Courts subordinate to them and encourage them, to use a wide discretion in applying the exemption provisions of Section 266 already referred to. Thus in this district grain up to 40 maunds is exempted from attachment and sale. By district order also no person can be imprisoned for debt without the District Officer's previous cognizance, nor is it held to be equitable that in seasons of drought, when there is no market for cattle, attached cattle be sold by auction. The decree-holder is then expected either to waive the sale until rain falls and produces pasturage, or to take the attached property himself at a price fixed by arbitrators. If the above provisions of the law and instructions of the Chief Court as interpreted in this district, be followed with sympathetic discrimination, the agricultural debtor obtains substantial relief. Unfortunately for him almost all those measures are of a permissive rather than of a positive nature; hence the relief afforded by them depends entirely on the pleasure of each Court, and most Civil Courts, particularly those of Munsiffs, by whom 56 per cent. of the civil litigation of the Province is heard, from overwork and other causes, are more inclined to apply the law mechanically than discriminately. On the one hand, in principle, the law broadly declares that every man is liable for his debts almost to the last asset in his possession, and that if he cannot pay them his creditor may arrest him, imprison him, and sell him up. On the other hand, framers and interpreters of the law seek to soften its harshness by exempting, in the case of agricultural judgment-debtors, certain specified articles of very small value from attachment and sale, and inferentially some sympathetic courts think others of real value by declaring that a debt may be decreed "by instalments with or without interest," by pointing out that the terms of formal "agreements" may be voided by the ignorance of the obligee, and finally by entrenching the sale of land behind so many delays, difficulties and incertitudes as to sometimes make it under the vigilant land protectionism of the present Judges of the Chief Court practically impossible for a non-agricultural creditor to have his decree executed at all. The outcome of all the enabling devices, I have mentioned is, I fear, unsatisfactory. Whilst not perhaps diminishing credit to any appreciable extent, they weaken security, and therefore tend to raise the rates of interest. The fact is, that in the law of contract in respect of agricultural debts as it now stands, an attempt has been made to assimilate two opposing interests and widely dissimilar intelligences. For the educated moneyed classes *inter se* the broad law, that credit is only limitable by the last asset, that contracts are sacred, and that every man is liable for all his debts, is suitable enough. To apply such a law and the provisions of the Civil Procedure Code for such litigants mechanically as overworked native Courts must, does no real harm, as debtor and creditor are business men of equal intelligences. But for the mass of the population, for the ignorant peasantry of the western districts of the Punjab, both law and procedure are unsuitable: hence various enabling palliatives and departures from the fundamental principles of law and procedure in code and in instructions. What I conceive is wanted is a law of debt as positive and simple as the Ten Commandments to meet cases in which hereditary agriculturists are concerned.

Three causes of indebtedness which are consequent on good government, and therefore unpreventable stated.

15. Before discussing remedies I shall briefly run through the causes—most of them already indicated, I think,—of the general indebted condition of the Muhammadan agricultural classes in the western districts of the Punjab. Those causes may be grouped under two classes, as natural or consequential, and as preventible. The former comprise those which a change from a weak unsettled native rule to a strong settled Government must inevitably evolve. They are—

(*i*) *The unlimited expansion of the inherent good and bad qualities of the two competing races—Muhammadan and Hindú—which the development of individualism has produced.*

With the advent of our rule the power derived from the numerical strength and individual superiority of the Muhammadans over Hindús of the trading classes in physique and courage ceased.

They started in the peaceful race heavily handicapped. With no means in hand they had to find money and pay it on fixed dates. Less self-denying, less intelligent and less earnest in work than their Hindú rivals, and cursed by the blighting fatalism of their religion, they made no struggle against what appeared to them to be their fate under the British Government, and so they stood still, retrograded, and now are sinking fast.

(*ii*) *The natural growth of population has been so promoted by peace, sanitary measures, &c., since annexation, that even thinly-peopled tracts are over-populated in bad years.*

I have already, in para. 13, remarked that, although the cultivated area to-day must be double what it was 30 years ago, and the population only 25 per cent. more, no comparison can be made between their respective ratios of increase in bad years. As an illustration, take the last 12 months in these regions. Owing to 10 months of comparative drought various unprotected tracts, *e.g.*, Miánwáli, Thal and Mohar, the Bhakhar and Leiah Thals, and the Daman of Dera Ismail Khan, have practically had no crop last autumn or this spring. Their collective "cultivated areas" are immense, and their populations even now very thin, and but that most of their agricultural population have migrated for a time, they must have died of starvation, as have about one-third of their cattle.

(*iii*) *The wages and the profits of agriculture have not risen in the same ratio as the cost of living has.*

My inquiries on this subject are not complete yet, but I think there can be no doubt that although prices, particularly those of agricultural products, have generally advanced in the last 35 years, the agriculturist spends more, until he has exhausted all his credit, *i.e.*, his last asset, than his represented by his share of the rise. He, I think, spends more on domestic occurrences. He certainly does so on clothes. Formerly coarse home-spun cloth was worn. Now much of it is of finer texture, and since the reduction and final abolition of the cotton duties so much is English, that village weaving, except in special localities, as in parts of the Shahpur and of the Jhang districts, is seriously on the decline. As to food, it is difficult to give an opinion. It is probably as true in the East as it is in the West, that as the consumption of luxuries spreads amongst those who can afford them, a craving for, and occasional indulgence in, them penetrates the lower strata of society. A proof of the diminished standard of misery, or called it rise in the standard of comfort, is observable in the fact that all natives on fixed cash incomes receive now about 20 per cent. more than was paid to them say 25 years ago; and this although it has not yet been proved that the purchasing power of the rupee in respect of the commonest necessaries is less. The percentage of Muhammadan cultivators who frequently indulge in wheaten cakes, *ghi*, and sometimes in meat, is certainly larger than it was a quarter of a century ago. Then in the poorest households, if not yet insolvent, some metal utensils are to be found, though formerly only earthen vessels were used. Again—and this is a very important additional item of expenditure, particularly with indebted families—so many taxed and untaxed references to authority and so much recording is now required in the ordinary transactions of agricultural life, that even when the misfortune of litigation is avoided, an appreciable something has to be annually, or at least occasionally, spent on stamps and fees of sorts.

The three preventable causes of indebtedness stated.

16. The three causes enumerated in the last para. are more or less the consequences of good government and indicative of general prosperity. I have now to describe and shortly discuss those causes which I have termed preventable. They may be grouped under the following heads:—

(*i*). The law of contract in respect of agricultural debts, and the law of Civil Procedure being framed in the interests of exact business men, are therefore in advance of the state of knowledge and requirements of the masses, and particularly place the agriculturists at a disadvantage compared with the money-lending classes by over facilitating credit and usurious practices, and promoting expensive litigation.*

* See Chapter XIV of Caird's "India : the land and the People."

(*ii*). The rigidity of our revenue system in unprotected tracts subjected to fixed assessments and frequently over-assessment, particularly in early years.

(*iii*). The perversion of District Officers and Tahsíldárs from their proper work of administration into clerks and collectors of statistics owing to the growth of bureaucracy and centralisation.

How the improvement of security caused by good government, and particularly by a regular settlement, increases indebtedness: the moral of the lesson.

17. I shall now discuss each of the above preventable causes, and in this para. deal with class (*i*)—*the law in respect of debt and civil procedure.*

Before annexation a cultivator's credit was practically limited to what he could pay at harvest time in a few good years, after deducting enough for his own support and the share taken by the State. At and near the centres of Sikh rule, and in some well tracts, baniahs sometimes lent money on mortgages, but the practice was nowhere common and hardly existed Trans-Indus. Upon the change to British rule this very limited credit suddenly expanded up to the limit imposed by the last marketable asset of the borrower. As summary settlements were replaced by regular settlements, with their elaborate records of right, all doubts as to title disappeared, and every interest in land became marketable.* Considering what cultivators are, is it surprising that even when the necessity of borrowing in order to pay the assessment did not exist, the temptation to do so was, and still is, too strong for them.† Under our rule they began to live better, and so long as they can borrow they are too thoughtless, ignorant and self-indulgent to curtail expenditure. Consider the case of the Muhammadan upper class, the rural notables, such as Lambardárs and Raíses of hospitable nature. Can any Deputy Commissioner or Settlement Officer recall to mind more than one or two exceptional individuals who reduced expenditure on finding that if they did not do so their heirs would be paupers ? As with their upper classes, so with their lower, the Muhammadans, in these regions at least, are as little to be trusted with that dangerous product of civilisation—credit—as are minors. As minors our laws ought to have treated them, but did not ; and to us belongs the discredit of placing in their hands without restriction such an instrument for self-destruction. Even had we left credit unshackled we ought still from the first to have indirectly protected the ignorant borrower from the consequences of his weakness, but we did not ; and the very latest edition of the Civil Procedure Code which does make a show of protecting him, merely *empowers* courts in a half-hearted way to treat him indulgently, although it is perfectly well known that the majority of the Courts are too overworked to add to their labours by anything which increases them. Whilst there remain in the Code those sections which authorise or order arrest, attachment, imprisonment and sale of a judgment-debtor's property, the Hindú will continue to lend recklessly, and the Muhammadan to borrow foolishly to his own ultimate ruin.

Limitation under native system and ours contrasted : effect of law administered by Munsiffs on indebtedness.

18. *Class* (*i*)—*Preventable causes continued.*—Under Native Governments a cultivator might borrow, but he was only expected to repay the debt with reasonable interest when he had a good harvest. Now if it is a parole or book debt he must repay or renew with the compound interest superadded as principal in three years, or be hauled into Court. And yet in unprotected tracts he may only have one good harvest in five or six years, and until he gets a good harvest he cannot repay any part of his debt. I know a village (Takwára) in the Daman tract (unprotected) in this district, whose full assessment is Rs. 15,000, which has not had one good crop since 1877-78. A debtor has such a dread of our native courts that in the majority of cases when threatened by his creditor he agrees to have a bond written to renew or to mortgage or sell "voluntarily," as it is called, in order to avoid the trouble, delay and ex-

* "The first reason for the increase (of alienations of land) is no doubt the greater clearness of titles which has resulted from the operations of the recent frontier settlements. Not only have doubtful titles been cleared up, but the Government demand upon the land has been fixed for a considerable term of years. By this double process a more certain value has been given to property in land, and experience has shown that wherever this result has been accomplished, an increase in the number of transfers has almost always resulted in the absence of special conditions calculated to prevent it," *i.e.*, put positively the better the security the more readily does the zamíndár part with it (para. 3 of Financial Commissioner's No. 668, dated 20th May 1883, to Secretary to Government, Punjab).

† See para. 169 of Mr. Steedman's Jhang Settlement Report ; also para. 56 of Mr. Roe's Mooltan Settlement Report.

pense of litigation,—often enough, too, I admit from the simple desire to put off the day of reckoning as long as he can. In all such transactions the debtor is practically at the mercy of his creditor. The account is solely in the hieroglyphics of the creditors, frequently on loose sheets of paper, and very rarely in proper form.* The bond or mortgage deed is written either in those hieroglyphics or in a high-flown foreign tongue. Assume that the debtor disputes the claim and is sued. He is probably summoned from his plough, very probably at an inconvenient season, and afraid of having to pay heavy costs, of the disgrace he will suffer from the attachment and sale of his little property or from imprisonment, in about 70 per cent.† of suits brought he compromises or confessses judgment, *i.e.*, agrees to any terms, provided that he gets back to his home quickly without immediate inconvenience or exposure. In the remaining 30 per cent. of contested cases, he leaves the Court in ignorance of what has happened in it, beyond the facts that he has paid in stamps, fees and miscellaneous gratifications several rupees, and has to pay a large lump-sum, plus 12 per cent.‡ or more, as costs. In Court he has seen a glib, town-bred, unsympathetic foreigner, some young University man, old clerk or cadet of a noble but half-ruined family, dispose of his case in half an hour or less, the pleadings being conducted and the judgment delivered in language wheih he did not understand. If he is weak enough to yield to the evil advice of petition-writers or touts of sorts outside Court, and obtains a copy of the order and appeals, he generally loses more money and weeks of time. Then when execution is taken out, a starveling bailiff, called a process-server, struggling to maintain himself and his family on Rs. 5 per mensem, and what he can make out of litigants, enters his house with a list of articles to be attached in his hand, and unless bribed, performs his duty as offensively as he can. From institution of suit to execution sale, the native Court has, in most cases, neither the time nor the inclination to protect the defendant's or judgment-debtor's interests, as should be the case; every Court being morally bound, besides dispensing the law, to act as a sort of specially retained pleader for both parties, more particularly for the weaker side.

19. *Class (i).—Preventable causes continued.*—Throughout the Province munsiffs are the chief agency through whom baniahs sue agriculturists. The Civil Report for 1882 shows their working for that year as follows:—

Outturn of work by Munsiffs so enormous as to constrain them to apply the law harshly and mechanically: their establishments are underpaid and they are over-worked.

There were 74 munsiffs who disposed of 151,588 suits, or 56·9 per cent. of the whole litigation of the year. Besides disposing of a lakh-and-a-half of civil suits, munsiffs decided 18,090 miscellaneous cases and 97,944 execution proceedings. Thus in all during the 234 § working days of the year, without making any allowance for the last Saturday of each month, involuntary absence from Court, from sickness, &c., the 74 munsiffs of the Province disposed of 267, 622 cases, or on an average 15 cases per diem. Now, a munsiff's pay averages Rs. 183 per mensem, and each munsiff has the following establishment:—

1 Muharrir or writer on Rs. 17 per mensem.

1 Náib-Názir or Deputy Court sheriff } on Rs. 15 per mensem.||

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* I instituted inquiries throughout the district as to whether baniahs would be very averse to being required to submit properly leaved account books before some tahsíl official who would enter the number of each page and the total number, and stamp or sign his name under it; but as most of the petty village tradesmen preferred their old system of fragmentary accounts, and as other difficulties arose, I did no more. Inorder to constrain tradesmen into keeping all their accounts in proper form at least, I think that all Courts should be enjoined to insist on the production of a consecutively paged and numbered day-book (*súr bahi* or *rozndmcha*) and ledger (*kháta bahi*), or attested extracts from them before summoning a defendant on a claim based on an account debt.

† This percentage includes disposals without trial, where plaintiff fails to appear generally, because debtor has come to terms with him out of court. *Ex parte* cases, which amount to 9 per cent. on disposals, are also included here.

‡ The following table shows the range of *legitimate* costs in petty suits up to Rs. 300 heard by Munsiffs:—

Value.		*Costs.*	
10-Rupee suits	=	20 to 31	per cent. on value.
50 ditto	=	11 to 15	ditto.
100 ditto	=	9 to 13	ditto.
300 ditto	=	10 to 11	ditto-

§ I deduct 52 Sundays, 26 days in September, and 53 holidays,—in all 131 days in the 365.

|| He makes about Rs. 5 per mensem more on auction sales.

Looking to the above figures, I think the conclusions are established that munsiffs and their establishments are overworked and underpaid, and on these grounds alone, did other reasons also not exist, constrained to perform their work hurriedly and mechanically. I will now analyse the work done. The 1½ lakhs of suits disposed of were so in the following way:—

39,677, or 26·0 per cent., by judgment on the merits.

1,599, or 1·0 per cent., by arbitration.

13,687, or 9·0 per cent., decreed *ex parte.*

602, or 0·5 per cent., dismissed *ex parte.*

28,552, or 19·0 per cent., decreed on confession.

38,229, or 25·2 per cent., compromised.

29,238, or 19·3 per cent., without trial.

Now about 83 per cent.* of the suits disposed of in the above ways were for money owed. † Of the whole number of such suits 25·6 per cent. were for Rs. 10 or under; 48·4 per cent. for sums between Rs. 10 and 50; 17 per cent. for sums between Rs. 50 and 100; and 9 per cent. for sums between Rs. 100 and 300. I can find no returns which show the number of decrees in whole or part to disposals by munsiffs, but I find that 97,944 ‡ applications for execution were disposed of, and assume that that number nearly represents the number of decrees given. Well, the value of money decrees in execution was Rs. 40,84,493, and of this sum only 36 per cent. was realised. Dividing the money value of the decrees by the number of applications for execution, we find that the average amount of each decree was Rs 42. As the cost of litigation is in the inverse ratio to the value of suits, it follows that costs in munsiffs' courts average high. Taking 13 per cent. as the average cost of a suit for Rs. 42, and allowing for miscellaneous and unnecessary expenses invariably incurred by ignorant litigants for cost of execution and for the significant fact, notwithstanding the various coercive measures of arrest, attachment, imprisonment, and sale, that 64 *per cent. of the money decreed were not realized,* I am warranted, I think in asserting that, in petty suits for money or moveable property when execution is sued out, the costs amount to over 40 per cent. on that portion of the realizations which represent the decreed amount exclusive of costs. I do not think that the above figures can be regarded with equanimity. They seem to me to extort further conclusions in favour of cheapening costs, improving the position of munsiffs, strengthening their establishments, simplifying procedure, and of altering the law of contract in respect of debt. This subject will engage attention futher on.

Rules as to suspensions and remissions fail to counteract the evils arising from the inelasticity of our revenue system.

20. I have now to deal with *Class (ii) of preventable causes,* viz., *involuntary indebtedness arising from the rigidity of our revenue system in unprotected tracts.*

Recent settlement operations all over the Punjab, and events elsewhere, have discredited the wisdom of the old belief that light fixed cash assessments would teach thrift, and that the profits of good years would compensate for the losses in bad years. We now know that in early summary settlements, and even subsequently light (?) cash assessments have had, in unprotected tracts, a large share in the degradation of hereditary agriculturists. We know, too, that from various causes, suspensions and remissions when made are not, as a rule, made in time, and that, as a general proposition, if the assessment in any year exceed a just proportion of the outturn of that year, ordinary peasant proprietors must borrow at usurious rates of interest. Although the above are facts recognised by every Settlement Officer and District Officer, Government drifts on and makes no change, but contents itself by recommending its desk-tied executive to freely apply the rules under which suspensions may be granted. I will make suggestions as to the change of system I desire to have introduced in their proper place.

* This percentage has been calculated on institutions, as no return shows disposals of money suits.

† No return shows what portion of the money owed was due by others than agriculturists.

‡ From columns 5, 6, 7, 9, 11, of Statement 4, Civil Report for 1882, it would appear that in 110,947 cases decrees issued.

District, Administrative and Executive Officers desk-tied all the year round, owing to statistical demands of Heads of Departments: statistics given to show growth of such work.

21. I pass on to *Class (iii) of preventable causes*, viz., *the absorption of District Officers on clerical work to the exclusion of their administrative and executive work.*

This evil has long been admitted by Government, but no real attempt has yet been made to reduce it. Of late years new departments, new returns, the further elaboration and amendment of old returns and reports and too frequent calls for detailed information on a variety of subjects, have so tied the Administrative and Executive Officers of a district to the desk that, even in camp, they see little of the people or of the country, and do local inspections superficially and very little supervising work. The subjoined figures show how routine work, English and Vernacular, has increased of late years in this district :—

I.—English Department.

Year.	Number of Letters received.			Letters despatched			Grand Total.	Remarks.
	From Commissioner.	From others.	Total.	To Commissioner.	To others.	Total.		
1865	445	595	1,040	305	488	793	1,833	Treasury and demi-official work not included in this statement.
1870	595	1,148	1,743	390	927	1,317	3,060	
1875	1,430	1,751	3,181	739	1,059	1,798	4,979	
1880	1,190	1,800	2,990	717	1,370	2,087	5,077	
1883	1,396	2,346	3,742	863	1,710	2,573	6,315	

II.—Vernacular Department.

Year.	Revenue cases.	Municipal and District cases.	Political and Border.	Grand total of cases to be disposed.	Remarks.
1864-65	3,135	...	557	3,692	
1870-71	2,110	109	425	2,644	During currency of settlement, revenue business of district decreased.
1875-76	1,227	1,159	733	3,119	
1880-81	8,977	1,055	1,051	11,083	As I sign my name or intitials on the average 15 times in each case, the total signatures in 12,208 vernacular cases is 183,120 in the year. Of this number probably only one-third are signatures, a rubber stamp being used as much as possible.
1883-84	9,916	1,159	1,133	12,208	

III.—Treasury Department.

Year.	Number of returns and schedules periodically submitted.	Registers or schedules kept up.	Letters received and despatched.	Bill transactions.	Remarks.
1865-66	126	25	Unknown	1,651	1. The number of payments to civil and military pensioners is 655 now, and is not included in the figures given, nor are Savings Bank transactions.
1870-71	353	30	321 in 1873-74	2,100	
1880-81	674	45	726	4,102	2. Increase of figures does not fully show growth of work, as statements, &c., are all more complicated now than formerly. Thus formerly a single sheet return was enough for stamps. Now there are six returns with over 300 columns in them.

22. Before proceeding further, I think it well to sketch in the situation as it is to-day, and then to distinctly state the problem towards the solution of which I shall contribute some suggestions. In the seven districts* comprising the Mooltan and Deraját Commissionerships, there are 24 lakhs of Muhammadans and 4½ lakhs of Hindús. The hereditary occupation of the former is agriculture; of the latter trade. Under Native Governments the former locally dominated the latter, who, except perhaps in the very centres of Sikh power, generally acknowledged their inferior status. Since the advent of British rule, 35 years ago, a series of causes, some avoidable, some consequential on good government, has so far reversed the relative positions of Muhammadans and Hindús, that the latter, besides absorbing much of the increased material prosperity of the country, are slowly, but surely, expropriating the former. Thus the Muhammadans, who outnumber the Hindús by 6 to 1, are sinking down into the position of serfs to the despised "Karár." The Hindús, strong in their superior wealth, natural intelligence, thrift, education and powers of combination, already show that they appreciate their increased consequence, and attempt to lord it over their old master. The Muhammadans, ignorant, improvident and disunited, feel their own weakness, and, like true fatalists, resign themselves to what appears to be the inevitable. Their apathy is, however, only surface deep. There are indications everywhere of the secret impatience with which Muhammadans endure the Hindú yoke. Occasional cow-killing cases, religious book-selling disputes, and agrarian outrages may mean little; but the undisguised antipathy, and even contempt with which every Muhammadan speaks of the "Karár"—in which opprobrious name he includes all Hindús engaged in any business—show what his feelings are. His hatred of the race which is ousting him from land and home, is aggressive, whereas the Hindú dislike for the Muhammadan is defensive only. Considering the frontier position of the Deraját and Mooltan Divisions, that beyond lies a Muhammadan kingdom, and beyond that again Russia, ever on the watch to embarrass us, it seems to me, to put it on its lowest grounds, necessary in self-interest to arrest the further degradation of the Muhammadan peasantry. This peasantry, hitherto so patient, so loyal, which sided with us from the first, and bled freely for us at Mooltan in the 2nd Sikh War, throughout the Sepoy Mutiny (the result of a Hindú combination by the way), and lately in Afghánistán, know their own fighting strength, and should the economic causes now in progress

The situation of to-day plainly stated: the necessity of protecting the Muhammadans from the Hindu money-lender urged, and the problem before us stated.

* The population is as follows:—

		Muhammadans.	Total population.	Percentage of Muhammadans to whole population.
Mooltan Division	Mooltan	435,901	551,964	79 per cent.
	Muzaffargarh	292,476	338,605	86 ditto.
	Jhang	326,910	395,295	83 ditto.
	Montgomery	330,495	426,529	80 ditto.
Deraját Division	Dera Ismail Khan	385,244	441,649	87 ditto.
	Bannu	301,002	332,577	90 ditto.
	Dera Ghází Khan	315,240	363,346	87 ditto.

There are seven other Muhammadan districts in the Punjab:—

		Muhammadans.	Total population.	Percentage of Muhammadans to whole population.
Ráwalpindi Division	Ráwalpindi	711,546	820,512	87 per cent.
	Jhelum	516,745	589,373	87 ditto.
	Gujrát	607,525	689,115	88 ditto.
	Shahpur	357,742	421,508	85 ditto.
Peshávar Division	Peshávar	546,117	592,674	92 ditto.
	Hazára	385,759	407,075	94 ditto.
	Kohát	169,210	181,540	92 ditto.

In the 14 Muhammadan districts there are in all 5,681,921 Muhammadans who compose 86·72 of the entire population.

be suffered to continue, and create, as they would, a desire for a change in the hearts of the Pathán, Biloch and Jat tribes of these parts, our difficulties would be their opportunity. Of leaders there would be no lack, and for a cause what better than the cry, honored and promoted as it is by many a Liberal, "the land for the people." The problem, then, towards the solution of which I am about to offer suggestions, is how to avert the further transfer of marketable interest in the land from the agricultural to the non-agricultural classes.

Aims of remedial action stated.

23. In paragraphs 15 and 16 I held that, out of six causes to which agricultural indebtedness is traceable, three are wholly or largely preventable. In paragraphs 17 to 22 inclusive, I made some general remarks on each of those preventable causes. It follows from what I have said, that the aims of remedial action should be directed towards—

(A).—The imposition of restrictions on existing facilities for borrowing*, *i.e.*, the curtailment of credit, including the amendment of the law of contract in respect of agricultural debts and of the procedure of our Civil Courts, so as to bring the law into closer accord with the state of knowledge and progress of the masses—(See Preventable cause No. *i*).

(B).—The substitution, in unprotected tracts, of an elastic revenue system for the present rigid fixed demand system—(Preventable cause No. *ii*).

(C).—The abolition of returns and reports, the practical utility of which cannot be proved, and the simplification of those retained, with a view to the release of executive officers to their proper duties—(Preventable cause No. *iii*).

General remarks on reform: Land Banks and permanent fixity of demand likely to increase existing evils: reference to papers on the subject under examination.

24. To attempt any reform in the directions above indicated is, I am aware, venturing on dangerous ground. Big and beset with difficulties as the subject is, I am encouraged to press it on the attention of Government, because Government itself feels anxiety about the indebtedness of agriculturists; because, whatever it may be in the North-Western Provinces, it is not too late in the Punjab to initiate reform; and because I have the example of the "heroic" measures adopted in the Deccan in 1879, to solve the very problem towards the solution of which I am about to make suggestions. I am aware, too, that the extension of primary education is a great desideratum. But generations must elapse before any general intellectual improvement can result from a movement of a necessarily very slow growth. I am aware, too, that many think that the desired amelioration in the condition of the agricultural classes must be sought for by the introduction of Land Banks, and a sort of permanency of assessment. The former is an experiment now about to be inaugurated by its apostle, Sir W. Wedderburn, in the Deccan, and will, I hope, succeed. The only danger I see in the introduction of Land Banks into the Western Punjab is, that if they succeed as cheap money-lending institutions, they will tend rather to expand than to contract credit†, and that, therefore, sooner or later, as bad debts accumulate, the odium of attaching and managing or selling the defaulter's land will be thrown on Government. As to permanency of assessment, I have written freely about it in my No. 184, dated 23rd February 1884, to address of Senior Secretary to Financial Commissioner, Punjab, and think that, even if the constancy of the agricultural circumstances of any tract should encourage its adoption there, it will, by slightly enhancing the value of land as a security, increase the existing temptations to borrow, and so accelerate

* "To the reader of this book abundant evidence from all the drier parts of India has been afforded that the strict application of the principles of English Law, as between debtor and creditor, is becoming very disastrous. The Limitation and Stamp Acts, which came into operation in 1861, were intended to protect the debtor against his wily creditor by enforcing short accounts, and to curb the spirit of litigation by imposing a tax upon suits. But though the revenue has been benefited by the tax, it is at the cost of the poorest class of cultivators, who, being in nearly all cases the losers in an appeal to the courts, have to pay it in addition to their debt. Litigation has at the same time greatly increased by the necessity of an appeal to the courts every third year instead of once in twelve. The general effect of a well-meant change has thus been ruinous in some parts of the country, but especially in the Deccan, where it has been found necessary to supersede the law by a remedy of a most drastic character."—(Caird's "India: the Land and People," pages 209 - 210.)

† "But in the experiments about to be made of Government Agricultural Banks we should be careful not to increase the ryots' temptation to incur debt"—("India: the Land and the People," by Sir James Caird, page 209).

the transfer of land into the hands of the moneyed classes. Such a consummation would be disastrous, and only precipitate agrarian troubles. With these remarks I proceed to suggest the lines on which measures to effect the objects classed in the last paragraph under heads A, B, C. might be considered. In each case my proposals are, I beg it be clearly understood, simply suggestions. If better arguments can be advanced against the reforms I propose, than can be urged for them, I shall as soon as made cognizant of them, be ready to alter my present views. I am not submitting those views hastily, for besides having considerable experience in agricultural matters, I have read all the evidence on the subject which was accessible to me, particularly the three volumes appended to the Report by the Deccan Riots Commission, that report itself and the sweeping remedial measure resulting from it. I have also, of course, studied the Report of the Famine Commission, Part II, various Settlement Reports and the Acts of the Legislature which of late years have been passed with a view to afford agricultural relief for different tracts in India. I particularly draw attention to Appendices A and B to the Report of the Deccan Riots Commission, in which the causes of and remedies for agricultural indebtedness, and the action of the law and of the Civil Courts on the agricultural debtor in the different Governments of India and in Europe, are examined.

Unrestricted credit a ruinous boon for Muhammadan peasants: speculations on effects of a law making petty debts up to Rs. 50 non-cognizable by our courts; Munsiffs' Courts promote indebtedness.

25. Head (A) *Restrictions on existing facilities for borrowing*—I think most Civil Officers who either are or have been District and Settlement Officers for any time, will agree with me that the average agriculturists, in the western Punjab at least, is not a suitable subject for the dangerous boon of unrestricted credit.* Children in mind and knowledge that they are, I have often tried to excogitate the consequences of treating them to some extent as children. With a minor the payment of a debt is, on attainment of majority, a moral obligation only. I am not at all sure that, were all Muhammadan cultivators in secured areas treated as minors in respect of debts of Rs. 50† and under, the result would not be beneficial. If the experiment could be tried within some limited, and in the first instance, fairly protected area, it will be very interesting to watch its effects. There are baniahs engaged in trade in every hill village, and part of their trade is to lend money. Our own baniahs annually venture lakhs of rupees in hill trade, and yet across the border repayment of a debt is merely a moral obligation. Wherever a munsiff's court is established, there litigation increases; baniahs grow richer, and poor agriculturists poorer. There are great areas in which there are practically no Civil Courts within easy reach, *e.g.*, the country of the Mazári Beelochis,‡ the Gundapur country §, the Dera Fatteh Khan Iláka‖, the Tank ¶ tahsíl (this until three months ago). Trade flourishes in those tracts, yet hardly any petty litigation comes from them. The reason is that in them a convenient court is not at hand, hence credit is restricted, and both debtor and creditor *perforce amicably* settle their disputes with or without the aid of improvised conciliators. Both benefit, as neither has to pay any costs. However, I suppose that the experiment of making small debts non-cognizable by our courts is for the present beyond the range of practical reform. I accordingly proceed to discuss measures with the object of limiting credit which are within that range.

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* See Mr. Steedman's Jhang Settlement Report, paragraph 169.

† Seventy per cent. of the whole litigation of the Province is on account of such debts. In every suit one or other party pays all the costs. In Munsiff's Courts only 36 per cent. of the money value of decrees in which execution is sued out is realized, arrest, attachment, sale and imprisonment notwithstanding. For every Rs. 50 so recovered, over Rs. 20 has been paid in costs. In the returns suits, but not defendants, are classified: hence it is impossible to say what are the relative percentages of agricultural to non-agricultural defendants.

‡ When, as Officiating District Officer of Dera Ghází Khan in 1881, I inspected Nawáb Imám Bakhsh Khán, Mazári, C.I.E.'s villages and judicial work, I found that, though himself unable to read and write, he knew all the points in each of the files examined, and that his decisions were markedly sound common sense. I believe, too, I am right in stating that this illiterate man, acting as a conciliator, and using his personal influence, settled most debt disputes without record, and that hardly any land in his country was then alienated to Hindús. Had a Munsiff's Court been opened at Rojhán, and had the district in Mr. Fryer not long possessed an administrator who understood how to adapt his rule to the backward state of the country, it is probable that the money-lender would by then have firmly established himself in Mazári land.

§ See foot-note, paragraph 9.

‖ This tract is about 50 miles by road from the nearest court, and the intervening country is very difficult to traverse.

¶ In April last the officiating tahsíldár began to exercise civil powers up to Rs. 50. Previously the courts at the Sadr, 40 to 50 miles off, were the nearest courts.

Abolition of arrest and imprisonment for debt proposed and discussed.

26. *Head* A (1).—I suggest the abolition of arrest and imprisonment for debt in respect of hereditary agriculturists, either absolutely or for all cases except for those in which the decree-holder previously satisfies the court that the judgment-debtor has means for meeting his debt over and above what are required for the support of himself and of his family.

The taking out of the warrant, or the threat to do so, or the actual arrest preliminary to imprisonment, coerces most judgment-debtors into arranging terms with their creditors. In 1882, 9,011 persons of all classes were so arrested, out of whom 989 were imprisoned throughout the whole Province. Courts presided over by British officers are always averse to imprisoning agricultural debtors.

Assuming that half of those imprisoned in 1882 were agriculturists, the number is very small indeed. If their files were examined, I believe it would be found that the majority had no means for satisfying their debts when imprisoned, and were so from presumably spiteful motives. In England, no debtor, generally speaking, can be imprisoned for a debt under £20, and imprisonment is held to be a satisfaction for the debt. In Scotland, imprisonment is not permitted for an ordinary debt under £8-6-8. In Orissa, arrest and imprisonment for debt have been absolutely abolished (clause 28, Sonthal Code). By Section 21 of the Deccan Agricultural Relief Act, 1879, both means of coercion are also abolished in the four Collectorates * to which that Act applies. The existing law encourages spiteful imprisonment, generally consigns paupers to jail, increases cost, and falls with cruel severity on helpless women and children, who are thus deprived of their bread winners. That the judgment-debtor may apply to be declared an insolvent does not benefit him, is proved by the fact that few so apply (the number in 1882 for the Province was 283). The term "insolvent" frightens an agriculturist. It is to be regretted that courts do not freely cause judgment-debtors, for sums of Rs. 200 and under, to apply for the protection from future liability a declaration of insolvency would give them. To do so would increase work: hence munsiffs cannot be expected to help judgment-debtors in this way.

Land and tenant's share of produce proposed to be exempted from attachment and sale, unless specifically pledged.

27. *Head A* (2).—I further propose that land and the tenant's or cultivator's share of the produce of land, unless specifically pledged, † when held by Muhammadan agriculturists, be exempted from attachment and sale in execution of a decree,‡ either altogether or below the minimum—to be fixed for each district according to circumstances—requisite for the support of the agriculturist and of his family.

The discretionary powers vested in Collectors and the Chief Court are now so stretched that, for the satisfaction of a decree against a hereditary agriculturist, temporary alienations of land up to 20 years are generally alone permitted.

Thus practically the action of the supervising courts bars the sale of land in execution of a decree against the classes just named. In 1881 the sale of hereditary or jointly-acquired land was only sanctioned in 60 cases; in 1882 in 30 cases. In this district, in the last five years, 20 applications for sale have been submitted for sanction to the Chief Court, but only eight were sanctioned, and none of those eight cases concerned the sale of an hereditary agriculturist's land to a non-agriculturist. The very formalities required, and the natural sympathy of the courts, or rather of the Deputy Commissioners, check applications,

* They are Poona, Satára, Sholapur and Ahmadnagar, with a total area of 21,523 square miles and population of 3,296,686 souls.

† How to afford relief in such cases it is not easy to see. Section 30 of the Deccan Agriculturists Relief Act (XVII of 1879) lays down that, when any scheduled debt is secured by a mortgage, if the collector can obtain a premium wherewith to liquidate the debt he may let the property for any period up to 20 years, but that otherwise he must sell. I am disposed to think that this procedure might be followed, and that the auction purchaser, if not an hereditary agriculturist, should not obtain the property until a reasonable period elapse, and no such hereditary agriculturist comes forward and pays down the amount.

‡ "In the dry countries of India the native system of land tenure, if administered with the same justice as under British rule, is much more conducive to the prosperity of small land-holders than ours. If we had maintained the native principle, that the land could not be sold for debt, there would have been less credit given, and the cultivator would have had to rely on his own industry instead of being propped up by borrowed capital.' (Caird's "India: the Land and the People," page 209.)

and when submitted and returned by the Chief Court unsanctioned, with a recommendation to try again and satisfy the claim by a temporary alienation, the course recommended, although ineffectual, is compulsorily adopted. Thus, whilst land as a legal security remains, in some sense, unimpeached by the law, it is so by the action of the interpreters of the law, with the result that credit is not restricted, but that interest is enhanced. On the one ground, then, that hereditary land is, in practice, rarely treated as saleable in execution of a decree obtained by a money-lender, I might urge that it be exempted by law from such sale. But there are other and stronger arguments in favour of such exemption. In the North-Western Provinces the subject has already been exhaustively discussed in 1870-73, and, but for the supposed depreciation of property, and the difficulty of reversing a practice which had obtained for generations, the Lieutenant-Governor would, in his final review of the arguments on both sides have, in the latter year, recommended the prohibition of the sale of ancestral property in execution of decrees for debt. In the Punjab the question was not very thoroughly argued out, and the opinions of the officers consulted were conflicting. The Lieutenant-Governor personally (the late Sir Donald MacLeod) was strongly in favour of the exemption of hereditary land from enforced sale for debt. His Secretary wrote as follows :—

"It is in His Honor's opinion beyond a doubt that under no Native rule has the forced sale of hereditary land for debts been ever recognised, and it is equally certain in his opinion that the principle of selling such lands in execution of decrees is at the present time entirely abhorrent to the feelings and opinions of the majority of the people of the Punjab. That it is equally distasteful to the people of the North-Western Provinces was sufficiently testified in 1857 by the scenes witnessed on the banks of the Eastern Jumna Canal by English refugees from Delhi—villages in flames in all directions and their auction purchasers ejected and dispersed, while their women flung themselves into wells to escape dishonor.

"With these facts before him, His Honor is strongly of opinion, that the absolute sale of hereditary or joint-acquired property in land, in execution of decree, should be prohibited, and that no temporary alienation of land under Section 244 of the Code of Civil Procedure should exceed 20 years."—(Appendix A., page 154, para. 27, Report of Deccan Ryots Commission.)

However, adverse opinions were too strong for him, and in February 1870 the Lieutenant-Governor's final recommendation was as follows :—

"As one of the Judges of the Chief Court, the Financial Commissioner of the Punjab, and the High Court, North-Western Provinces, are opposed to the prohibition of sales of land by law, it is hardly to be expected that the Supreme Government will agree to legislate in that sense ; but as the Lieutenant-Governor is strongly convinced of the great dislike of the bulk of the people at the present time to the compulsory sale of hereditary land, and also of the danger likely to result in times of trouble from a resort to the practice, he has thought it right to direct the submission of these papers ; and if entire prohibition be not deemed expedient, His Honor trusts that some more stringent rules to guard against the abuse of the power of sale may be laid down than those contained in Sections 243 and 244 of Act VIII of 1859 -(*Idem*, page, 142.)

Appendices A and B of the Deccan Ryots Commission only contain a fractional part of the arguments used in 1869-73 in Upper India for and against the exemption of hereditary land from enforced sale. My own view is, that few then grasped the fact, that the expropriation of the people of the soil in favour of nerveless non-agriculturists had then begun. Had that fact and its consequences been realized, the petty interests and expectations of a small and politically unimportant class would never have been permitted to override the adoption of measures necessary to the relief of the many and to the security of the State. The agrarian disturbances of 1875, known as the Deccan Ryots, which were confined to about 30 villages in the Poona and Ahmadnagar Collectorates in the Bombay Presidency, awoke the Government to the danger of letting foreign capitalists enslave the old peasantry of the country. A Commission was appointed to investigate grievances and to recommend measures of relief, and the result was the passing of the "heroic" measures commonly called the "Deccan Ryots Act" in 1879. Amongst other drastic changes, that Act declares "no agriculturist's immoveable property shall be attached or sold in execution of any decree * * * unless it has been specifically mortgaged for the repayment of the debt * * * and the security still subsists" (Section 22). As regards the exemption of the cultivator's share of the

produce of land, I think that there can be no two opinions. His share represents what is called by political economists the cost of production, and ranges from one-fifth to two-thirds according to local circumstances of the gross produce after *kamiána* deductions. One-third is perhaps the most prevalent rate. Acting in accordance with the spirit of Section 266 of Civil Procedure Code, which aims at exempting from attachment and sale the means of livelihood of the agriculturist, I have ventured to rule for this district, that in every case a minimum of 40 maunds of grain shall be so exempted. This helps a family to tide over the months intervening between one harvest and the next. The order has done much good, and is recognised as just by borrowing and lending classes alike.

An Insolvency Law wanted.

28. *Head A* (3).—I would further suggest the amendment of Chapter XX of the Civil Procedure Code, and the passing of an Insolvency Law to comprise, *inter alia*, provisions—

(*a*) requiring courts to discharge judgment-debtors owing Rs. 50 or less, when hereditary agriculturists, at once on payment of as much as the court thinks they can pay (*see* Section 19, Deccan Ryots Act, also Section 358 of the Civil Procedure Code);

(*b*) legalising a declaration of insolvency in favour of hereditary agriculturists owing Rs. 50 or upwards upon their simple application and proof of indebtedness, and enabling the Collector to receive and manage as much of their immoveable property as is not required for the support of the insolvent and of his family for the benefit of the creditors for a period not exceeding 14 years (*see* Section 25—29, Deccan Ryots Act).

The existing Insolvency Rules contained in Chapter XX of the Civil Procedure Code are, I think, faulty and inequitably harsh, because—

(1) none but a judgment-debtor can benefit by them;

(2) when the debts are over Rs. 200, the discharge is not a discharge in full, all property subsequently acquired being liable to attachment and sale for 12 years;

(3) no property is exempted from disposal for the benefit of the creditors, and so the insolvent and his family are stripped and left destitute.

The unpopularity of the law as it stands, is exemplified by the fact that in 1882 only 283 persons applied for its "benefit" throughout the Province (*see* Statement No. 7, Civil Report, 1882). Persons would almost daily file schedules of their debts before me, and seek an arrangement with their creditors by temporary alienation of their lands, but that in very few cases am I able to help them. As the creditors are often enjoying a share of each harvest as interest, they prefer not to sue their debtors. I have tried various expedients in order to settle debtor's outstandings, but only in a few cases have I succeeded. I have summoned the creditors and used pressure to make them come to terms. I have repeatedly urged the debtor to get a decree passed against himself, and engaged to leave him enough to save him and his family from starvation when declaring him an insolvent. I am endeavouring to arrange several heavy cases now, but the creditors know the advantages the law gives them, and I find it very difficult to settle fair terms with them. I have at present throughout the district, but chiefly in the Dera and Leiah tahsíls, 274 lambardárs* owing in the aggregate Rs. 5,81,157, whose debts I could easily

* Tahsil.	No.	Ascertained amount of debt.
		Rs.
Dera	106	1,84,000
Leiah	69	79,100
Tánk	55	96,200
Kuláchi	31	1,53,300
Bhakkar	13	68,450
	274	

arrange were a liberal Insolvency Law passed. Until it is passed, debtors from very hopelessness are precluded from any honorable exertion to free themselves. Many of their debts are inherited, and a large percentage have been liquidated over and over again in interest alone. Many are due to former over-assessments, or former rigidity of assessments, particularly in the Indus tracts of the Leiah tahsíl.

Suggestions on interest.

29. *Head A* (4).—I would also suggest that some simple rules about interest should be made, requiring all courts, in suits between agricultural debtors and their creditors, to record distinct findings in all cases, registered bonds notwithstanding, on what the true principle of the debt was, to decree only reasonable interest, and in no case to decree as such more than the amount of the principal debt.

I am not an advocate of Usury Laws, because I think they defeat their object. At the same time it is noteworthy that, so recently as 1872, a Usury Law was passed for Orissa (*see* Sonthal Pargannas Regulation III of 1872, Section 6). All the change I would recommend is that, instead of leaving it optional with a court to investigate the history of a transaction, and to allow what interest, simple and compound, it thinks fit, I would, in order to check idiosyncracies and minimise the gambling element which exists in litigation for debt, make it *compulsory* on a court to give distinct findings on the points noted above, and in no case would I allow the interest to exceed the principal so found. Many native courts think that they must decree according to the terms of a bond. Many do so, as it saves them trouble. I know one Deputy Commissioner who is strongly of opinion, and used to act up to it, that a rigid adherence to the terms of a written agreement, especially if registered, acts beneficially on borrowers. It should not be forgotten that munsiffs hear the vast majority of debt cases under Rs. 100, which amount to 86 per cent. of the whole litigation of the Province, and that the judgment-debtor can very seldom afford to appeal from decrees in such cases. Munsiffs being what I described them to be in paragraph 18, I think the less option they have in the question of interest, the better for the weaker side in the case.

Extension of period of limitation recommended to six years.

30. *Head A* (5).—I think that the period of limitation for money due on account stated or on bond, whether registered or not, should be extended from three to six years on the next occasion on which the Limitation Act is amended. From 1856 to 1859 the period was apparently six years for all debts. From 1859 to 1871 the period for debts on bonds was six years, and for other debts three years (*). Since 1871 the period for registered bonds alone has been six years, and in all other debt cases three years. The gradual reductions of period were made, I believe, in the supposed interests of debtors, with a view to enforce a balancing of all accounts as frequently as possible. The law, as it stands, effects this, but to the detriment of the debtor. If the account is settled out of court, principal and interest due to the date of balancing from the new principal which the debtor has to acknowledge. If the creditor uses the instrumentality of a court, the debtor finds himself saddled with principal, interest and costs besides. Now that courts will, in future, I hope as a rule only decree reasonable interest, the debtor will be on every ground a gainer by the extension of the limitation period to six years; and the chances of his having one or more harvests within that period, and so being able to meet his liabilities, will be doubled. I believe that I represent the wishes of all agriculturists and of most capitalists when I assert that a return to the period of limitation fixed by Judicial Commissioner's Circular No. 29-1131, dated 14th March 1859, or better the simpler extension proposed in the opening sentence of this paragraph, is desired by them. Such a change, though causing a slight diminution to receipts from the sale of court-fee and non-judicial stamps, would afford relief to agriculturists, money-lenders and Civil Courts alike.

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* Apparently for the Punjab the original period was 12 years. By Judicial Commissioner's Circular No. 82 of 1856 it was reduced to six years. Then by Judicial Commissioner's Circular No. 29 of 1859, it was further reduced to three years "in all cases relating to debt and accounts, excepting those arising out of bond or partnership," for which the six years' period was retained. This was the law until Act IX of 1871 was passed, which reduced the period for suits on a registered bond to three years. Now, under Act XV of 1877, it has been ruled that the period is six years for registered bonds (Schedule II, Article 116), and in all other debt cases it is three years. The number of debt bonds which are registered, it should be noted, is now small, and seems annually decreasing.

Simplification of procedure difficult: village Munsiffs' Courts as in the Deccan impossible: several positive proposals made.

31. *Head A* (6).—As to the simplification* of procedure, the subject is so involved, and depends so much on the qualifications of the Judge, that I can here offer few positive suggestions. When the Civil Procedure Code is worked with patience, discrimination and sympathy, instead of, as too often must be the case at present, with mechanical harshness, its application need not be burthensome on the ignorant debtor. The Famine Commission, in Sections 16 and 17, page 134, of Part II of their Report, single out for special commendation the provisions in the Deccan Ryots Acts for the multiplication of small *village* courts presided over by *village* headmen under the names of conciliators and village munsiffs. The object of the provision is to bring about a settlement of debt cases at the home of the borrower through the arbitration of honest and common sensible men of local experience, and there can be no doubt that where such arbitrators can be found, their decisions approach nearer to true justice than do those given by our Civil Courts. The antagonism and conflict of interests between Muhammadans and Hindús, and the want of ordinary integrity and impartiality in either class, particularly in the former, must, I fear, render the establishment of village courts impracticable in the western districts of the Punjab. We must, I apprehend, continue to retain Munsiffs' Courts of the existing Punjab type. In the appointment of munsiffs, were technical training and superiority of education regarded less, and more stress laid upon rural experience and established reputation for uprightness, tact and common sense, I believe that agricultural defendants would have greater confidence in the equity of munsiffs' judgments. It is only, I think, by such means that the grounds for the charges of over-technicality and want of equity in our Munsiffs' Courts can be removed. I cannot, however, hope to see any such "retrograde" measure adopted. All that I can suggest then is, that Munsiffs† and their establishments be better paid, and the latter strengthened (see paragraph 18) by the addition of one or more extra clerks per court, and by increasing the pay of peons who act as bailiffs. I would also suggest either that in agriculturists' debt cases no legal practitioners be permitted to appear in their courts, or that if they do appear, their fees should be charged in every case, whatever the result of the action, to the party who employed them. Section 68, Deccan Ryots Act, absolutely prohibits their appearance in Village Munsiffs' and Conciliators' Courts. Further, in order to relieve agriculturists from being summoned long distances, and detained for days hanging about a court at the season in the whole year when their presence in the field is most necessary and most profitable, I think that, if during the weeks of spring harvesting ‡ all civil proceedings against agriculturists could be stayed, considerable relief would be afforded to them. I have one more suggestion to make in connection with this subject, and that is, that when cattle are sold in execution of a decree, the price should be fixed by arbitration, either invariably or at least in seasons of drought. I give a case in illustration, of the restraining utility of such a rule. During the last ten months hardly any rain has fallen in this district, and the unprotected parts, including the well lands of the Thal (as wells depend on live stock, and live stock under present agricultural conditions on pasturage),§ have suffered and are suffering severely. Large numbers of cattle have died from starvation; and at present, owing to deficiency of fodder, there is no market for them. Decree-holders, therefore, find it a good time to attach cows, milch buffaloes, goats and sheep, and buy them in cheap with permission of the court, or through friends at the auction. I have consequently thought it equitable to advise the courts of the district that the prices should be fixed by arbitration, or that decree-holders should postpone execution until pasturage becomes plentiful. I have here only mentioned one of several

* I have made no definite suggestions for reducing costs. The subject is a difficult one, because if litigation be cheapened, it will increase, and as the debtors pay the costs, they will suffer in consequence. The Civil Courts, and particularly the Munsiffs' Courts, yield an enormous net revenue to Government. This surplus, if it cannot be reduced by cutting down costs, should certainly be spent in improving the administration of justice. I have only made suggestions for improving the position of munsiffs and strengthening their establishments (see paragraph 117 of Report of Deccan Ryots Commission).

† Munsiffs of the type now found are fairly well paid; but looking to the enormous power they wield, to their often isolated positions, and to the fewness of appeals from their judgments, I think their pay and status should be improved.

‡ The reaping season is a very important and profitable time for the peasant. It lasts from three to four weeks, out of which time the *zamíndár* will probably be cutting his own crops for one week and those of his neighbours for the other two or three. He is paid at one-twentieth of what he cuts. The work is very remunerative. Reapers travel long distances in the season. Immediately after reaping is over, case work falls off in rural, Munsiffs' Courts, as creditors are a-field trying to collect their grain, interest and debts.

§ As a rule, too, well-irrigated crops require rain, and are very poor without it. Paragraph 91 of the Jhang Settlement Report already referred to explains in great detail how dependent such cultivation is on rain.

points in which the procedure rules regarding sale of attached property might be equitably relaxed with wholesome effect.

A uniform acreage rate on each year's cultivation recommended, instead of the fixed revenue system for unprotected tracts.

32. *Head B.—Substitution of an elastic for a fixed revenue system in unprotected parts.*—In Part II, Section IV, paragraph 8, the Famine Commission discuss this cause, and consider that "there cannot be much foundation" for ascribing indebtedness to it, because of "the very small proportion which the land revenue * bears to the gross produce of the land." This proposition may be largely true of the lands of most protected villages in the aggregate in fair and average years. But if we remember the following facts, it will be found to be inapplicable for unprotected tracts, *viz.* :—

(*a*). Many cultivated areas are such that over and above the tenant's share, *i.e.*, after deduction of the cost of cultivation, the balance available, whence to pay rent and revenue, is very small.

(*b*). An assessment is seldom distributed in proper proportion to out-turn either over the different revenue estates in an assessment circle, or over the different holdings in a revenue estate: in practice the poorest lands are over, and the best under, assessed.

(*c*). The normal state of the revenue-payer is admittedly one of poverty in a bad season; therefore if compelled to pay revenue when he has no crop, he must borrow.

(*d*). Suspensions and remissions—the supposed safety-valves for the fixed demand system—are for obvious reasons very seldom given in time.

It is needless to dilate on this subject. Every Settlement Officer, and every Deputy Commissioner who takes an interest in agricultural matters, knows that one of the causes for indebtedness is the rigidity of the revenue demand, crop or no crop. Assuming that it is a cause, it is my clear opinion, after long practical experience in the working of different systems of fluctuating assessments, that that obtaining for the Indus riverain lands of the Bannu and Dera Ismail Khan Districts is so simple, so easily worked, and so unsusceptible of fraudulent manipulations with the most ordinary care, that none of the usual objections can be successfully urged against it. The system is that a fixed and uniform acreage rate of assessment is imposed on each year's cultivated area.† This system is worked with perfect smoothness and success, and with great popularity, by the ordinary revenue staff of the district throughout hundreds of villages in the rich tract known as the Indus Kutcha. It has, I believe, too, been introduced in the riverain tracts of the Mooltan Division. If still greater elasticity is required, a standard commutation rate might be laid down, and be raised or lowered according to the market price of the main cereals cultivated (mostly wheat) at the time when the revenue instalments are paid. Two other systems obtain in this district, but both are very inferior to the simple one just described. The system just sketched commended itself to the Famine Commission for extension to "exceptionally dry up-land tracts, such as exist in some parts of India, where the rain-fall is very precarious and frequently inefficient."—(Famine Commission Report, Part II, Section III, para. II, page 129.)

Reduction of clerical work, and release of executive officers to their proper functions urged.

33. *Head D.—The reduction of the clerical work of administrative and executive officers to the minimum necessary for their proper supervision of their work.*—This is an admitted evil, and both the Financial Commissioner, in paragraph 75 of his Revenue Administration Report for 1882-83 ‡, and the Lieutenant-Governor, in paragraph 16 of his remarks on that Report, recognise its seriousness, and a promise is given that "every effort* * *will be made to reduce the great burden of reports and returns." I would suggest that a practical Commission be appointed to examine and report upon the forms of all returns of every description, Vernacular and English, submitted both to and by District

* When referring to the lightness of the land revenue most persons forget, or ignore the fact, that various cesses, as extra percentages on it, amounting to roundly an addition of from 20 per cent. to 25 per cent. on it have also to be paid. It is a mockery to assure a *zamìndár* that he only pays, say, Re. 1 per acre as land revenue, when he in all pays Re. 1-4-0.

† See pages 207 to 211; also Appendix, page 213, of Caird's "India: the Land and the People."

‡ This is the latest Report yet published. I read somewhere that the Statistical Committee which lately sat in Calcutta has altogether failed to grapple with the evil.

Officers, and to take the evidence of those who prepare and of those who sign them. By this means it will be possible to separate the useful from the useless, and to ascertain what whole returns or columns in returns are now fudged, and in the nature of things are likely to continue to be so. It is natural for the Heads of Departments to require elaborate statistics, and to seek information on every subject connected with their respective charges; but as the number of departments has increased, the burden of supplying all their wants has tended to reduce the District Officers and their Revenue subordinates to the positions of desk-bound compilers and statisticians.* In paragraph 21 I have given figures showing how office work has increased of late years. So false and indefensible did the present system appear to me, that some months ago I began the task on my own account, which I now propose should be undertaken by a Commission. I have had to give it up from want of time. This is not the place to enter into particulars. If a reform is to be made, the spirit with which it should be undertaken should be sternly utilitarian. All fancy statistics should be given up. The Judicial Separation Scheme will doubtless give relief. If, too, it were possible to make over all treasury work to a separate department, further relief would be afforded (see para. 21, III.)

The reforms proposed have either been introduced in some interior parts of India on less cogent grounds than now exist in the Western Punjab, or are slight and reasonable in themselves.

34. Revolutionary though the reforms suggested in the last eleven paragraphs may at first sight appear, they are not so in reality. The proposals to abolish imprisonment for debt, to exempt land from attachment and sale in execution of a decree, the relaxation of the Insolvency Law, and the imposition of positive instead of enabling rules about interest, are all based on the lines of the Deccan Ryots Act—an agricultural relief measure passed, as already stated, for four Collectorates in the heart of British India in 1879, on, I believe, less cogent grounds than exist for a similar change in the law in the western Muhammadan districts of the Punjab. In the Deccan only 30 per cent. of the landholders were "seriously embarrassed" (Famine Commission Report, Part III, Section IV, 13), and debtors and creditors, where not both Hindús of one race and creed, were aboriginal tribes and Hindús. Here the percentage of agriculturists seriously embarrassed is, in unprotected tracts at all events, certainly more than 30, the creditors are trading Hindús and represent no political force in the country, and the Muhammadans are the children of the soil, numerous, courageous and warlike, and their country borders on independent Muhammadan countries which are already becoming disturbed by the near approach of Russia. As to my suggestion to extend the period of limitation in certain cases, the repeated reductions of that period has notoriously failed to effect the object with which, I believe, it was made, and the general extension of the period to six years, for all except parole debts, would be satisfactory to all parties concerned—debtors, creditors and courts alike. Then as to suggested amendments in a procedure, the few positive proposals made are insignificant, and, I think, reasonble. Next, as to changes in the land revenue system, my suggestion is only to extend a system already introduced with success, and agrees with the recommendations of the Famine Commission. Finally, as to reduction of clerical work, I deal with an acknowledged evil, the startling and almost intolerable growth of which was illustrated by the figures given by me in paragraph 21.

Necessity of maintaining the hereditary agriculturist in the possession of his land urged on general grounds.

35. My apology for having thus lengthily put my present views before Government, without having been specially invited to do so, must be the importance of the subject. If, as I believe, the expropriation by Hindú money-lenders of upwards of 75 per cent. of the Muhammadans in Muhammadan districts† is under the existing law a matter of time only, the necessity of so altering that law, as to avert such a dangerous consummation, seems to me established. The Muhammadan districts are grouped together on the western side of the Punjab,‡ adjoin independent Muhammadan countries, already feel the consequences of the

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* The figures from which elaborate statistics are prepared, reports written, and theories built up, are mostly obtained from the returns and reports of the worst paid servants of Government, *viz.*, *patwáris* and *village chaukidárs*. In the Judicial Department statistics can be easily and more accurately prepared, and those who draw them up in the first instance are better off, being pensionary servants.

† See foot-note to para. 22, which shows that in the 14 most western districts of the Punjab the Muhammadans number 5,681,921 persons, and compose 86¾ of their entire population.

‡ It is worth noting that Muhammadans, owing to being comparatively worse educated and less trustworthy than Hindús, now obtain few good civil appointments. The Hindú is appropriating all the better paid sedentary posts, and now that even for the lower appointments in the public service the passing of qualifying

near approach of Russia, and take a keen interest in her advance. The Muhammadans of those districts are either already fighting tribes or easily capable, with a good cause, of becoming so. They outnumber the trading Hindús, whom they despise as their former dependents and individually unwarlike, by 6 to 1. If Government by inaction permits their expropriation,* is it conceivable that they will remain loyal should an opportunity for regaining their lost possessions occur? In every case of a popular rising which has yet occurred in India, has not one of the first objects of the insurgents been to destroy the proofs of their indebtedness, and to eject the foreigners who have, to their thinking, usurped their rights?† Are not many parts of the world now agitated by the cry "the land for the people," and do not most men of liberal views approve of this sentiment? The Government of India has now projects under discussion for giving a measure of security of tenure to tenants-at-will, for establishing a sort of permanent fixity of revenue demand, and for guaranteeing the whole benefit of private improvements to the improvers. But the very foundation of such beneficent schemes will be endangered, unless first of all the land be secured as a possession to its hereditary cultivators. This I conceive is the first desideratum, without the attainment of which the schemes just enumerated will, if carried out, merely precipitate the degradation of the Muhammadan tribes of the Western Punjab, and eventually tend to estrange them from us. So long as the peasantry of these sentinel districts in the frontier province of India is contented, the Government of a handful of foreigners like we are will be strong and popular. With a discontented peasantry, our position as rulers would be so critical, that concessions coming from us in our weakness might come too late. If I have succeeded in showing that preventable causes are gradually, but surely, ruining that peasantry, we must, I hold, sooner or later, in self-interest, at whatever cost, avert such a catastrophe; and if so, it is better to act now, whilst the progress of the disease can still be arrested without the use of any unwholesome drug. We are strong to-day, our rule is fairly popular, and expropriation has not proceeded very far; but if we defer decision on one plea or another ten years hence, the conditions will be less favourable. In Bombay District, officers repeatedly warned their Government 10, 20 and even 30 years before actual agrarian disturbances arose that, if the agriculturist were not protected, he would some day rise to right his own grievances. But no remedy was attempted until the riots of 1875 extorted the passing of such a sweeping relief Act, that it may well be termed revolutionary. Similar relief had already in 1855 and subsequently been given to the Sonthals of Orissa; but there, too, it required an armed insurrection of 30,000 peasants before Government recognised that, in ruling a backward people by laws far in advance of their state of civilization and knowledge, injustice had been done. In these frontier regions, unless the progress of those grave evils which I now press upon the attention of Government be arrested in time, they must intensify year by year, until the day will come when, instead of a quiescent, if not contented, Muhammadan peasantry, we shall have a restless people hopeless of self-betterment except from what change may give.

Concluding suggestions as to verification of extent of indebtedness; ascertainment of the working of the Deccan Ryots Act; and the drafting of a Western Punjab Agriculturists Relief Bill.

36. In conclusion, I beg to say that I have no desire that my belief as to facts should be accepted until verified by inquiry. I do not think that I have exaggerated facts, but I shall be glad if inquiry proves that I have overstated them. I believe that the evils described by me exist in other parts of the Punjab besides in the Mooltan and Deraját Divisions; that they are not confined to "unprotected" tracts, but only more acute in them; and that the general causes described

examinations is necessary, and for the higher either qualifying or competitive, the only doors of service which the average Muhammadans will be able to enter will be the Military and the Police.. In this district most of the Tahsíldárs and of the Deputy Inspectors of Police are, or obvious reasons, still Muhammadans. Hindús monopolise quite 80 per cent. of the better-paid civil appointments directly under me. This is probably the case in most Muhammadan districts. Throughout my service I have always, from motives of policy, given the preference to Muhammadans whenever their qualifications approached equality with those of Hindú candidates; but I have never been able to help them much. Muhammadan upper classes in conversation one and all deplore what appears to them usurpation of fat appointments under Government by Hindús. Of course the best men for the work in hand must always be appointed; but the facts and the feeling of Muhammadans in Muhammadan districts are factors in the general case which require consideration. About school education, too, many Muhammadans put the case thus:—"Though the Hindús compose only 20 per cent. of the population, they monopolise say 80 per cent. of the education cess, the whole of which we pay. This is unfair; we ought to have our own schools and scholarships." I mention all this to show how Muhammadans feel that they are losing ground on all sides, though still the dominant race.

† I cite the cases of the Sonthal rising in 1855; action of villagers in the Gangetic Valley during the Mutiny; Deccan riots in 1875; part played by our own Muhammadan subjects in the Tánk disturbances of 1879.

by me are operating in the same way in all except perhaps Sikh districts. I would suggest that native officials of rural experience and established tact, probity and industry should be deputed to visit every district in the Punjab, and, under the supervision of the District Officer, take each agriculturist's account in a few typical villages in each assessment circle. By this meaniss positive result will be obtained, from which the measure of the general indebteat ness of the agricultural classes will be easily calculable. I would also sugged- that the working of the Deccan Ryots Act be ascertained, as in the event of relies legislation being found necessary, I should think that some of the provisions oft that Act might be beneficially adopted as a basis of reforms for the Punjabf Finally, in the event of legislation, I would suggest that a Committee of Officers. of Settlement and District experience should be associated with those of greater legal knowledge, who would draft a Punjab or Western Punjab Agricultural Relief Bill.

P. S.—Perhaps it is right for me to add that this Note has been written here at Dera Ismail Khan in June after the work of each day had been disposed of, and that, owing to the heat and want of real leisure, I have probably made some mistakes in my figures, references or in the arguments used. If so, I trust that the circumstances under which I have written will extenuate all errors which may be detected.

1. Opinions on suspending execution of decrees in times of dearth, 1879.
2. Relief to indebted agriculturists, 1879.
3. Colonel Wace's opinion on reform of the law of Civil Procedure, 1879.

P. P. S.—After the above Note had been fair copied, I received the printed papers marginally quoted from Colonel Wace. I was unware of their existence until to-day. I was at home in 1879, and all the papers are of that year. I have read them carefully. I note that in paper No. 1 none of the Punjab District Officers and Commissioners consulted, except Colonel Davies, C. S. I., and Colonel Wace, appear to have been old Settlement Officers, and none but a Settlement Officer has full opportunity for understanding agriculturists. Had I read those papers before preparing my Note, I shoud probably have slightly modified some of my views; but the papers in no way weaken my main argument, or my conviction, that remedial action lies in the directions indicated in my suggestions for reform.

No. 507, dated 22nd May 1885.

From—H. C FANSHAWE, Esquire, Offg. Junior Secretary to Government, Punjab and its Dependencies,

To—J. A. GRANT, Esquire, Offg. Junior Secretary to Financial Commissioner, Punjab.

I AM directed to acknowledge the receipt of your letter No. 1189 of the 24th October last, forwarding a memorandum by Mr. S. S. Thorburn, Deputy Commissioner of the Dera Ismail Khan District, on the subject of the indebtedness of the Muhammadan agricultural population, and in reply to convey the following observations of the Lieutenant-Governor.

2. His Honor considers that Mr. Thorburn's paper is exceedingly interesting, and there is a great deal in it which commands his hearty sympathy. The question, however, is not a new one, nor is it confined to the Dera Ismail Khan District. On the contrary, it has been before both the Local and Supreme Governments repeatedly within the last few years, and many opinions and recommendations of experienced officers have been collected on the subject. There is no possible objection, however, to the circulation of Mr. Thorburn's paper for further opinion to selected officers in the Punjab, and, subject, to the following remarks, the Lieutenant-Governor will be glad if the Financial Commissioner will arrange for this.

3. On the general question Sir Charles Aitchison thinks that, so far as the evils complained of are inherent in the character and traditional habits of the people, or in the gradual extension of law and systematic Government over a country hitherto governed more or less irregularly (and this His Honor fears is at the root of most of the evils), little, if anything, can be done to improve the position of the agriculturists. There is no hope to be looked for in usury laws. Not only can these be evaded with impunity at every corner, but in the long run greater evils result from them than they aim at removing. In a poor agricultural country like India credit is indispensible to agricultural operations

even on the smallest scale, and restrictions upon credit and refusal to enforce certain bargains only renders it harder and more difficult to make bargains, and thereby enhances the burdens of a class who under existing evils are able to pay their way, and drags them down to insolvency. Where, however, evils arise out of the existing state of our laws and executive arrangements the case is different, and the remedy is no doubt in the hands of Government. With regard to some of these evils noticed by Mr. Thorburn and the Financial Commissioner, the Lieutenant-Governor would record the following observations.

4. The whole question of imprisonment for debt is already before the Government of India with a view to legislation. The personal opinion of Sir Charles Aitchison is that there ought to be no imprisonment for debt unless there is proof of fraud or wilful concealment of property. But whatever law is passed it ought, His Honor conceives, to be of general application without special reference to the indebtedness of agriculturists or Muhammadans or of any other special class of the country; and as this matter is already before the Supreme Government, and the views of selected officers regarding it will doubtless be sought hereafter. His Honor does not think that further opinions upon it need be called for at the present time.

5. The proposal to exempt from attachment and sale a portion of the cultivator's share of the produce appears to the Lieutenant-Governor to be a fair one. But here again the exemption should be of general application, and should apply to the absolute necessaries of all classes, and not merely of agriculturists, if this has not already been provided for.

6. The short period of limitation for suits for debt fixed under the present law has been complained of by many officers. The Lieutenant-Governor is disposed to think that the evils of it are not exaggerated, but the extension of the period should apply to all debts, and not merely to agricultural debts. Upon this point and upon the point mentioned in paragraph 5 in particular, the Lieutenant-Governor will be glad if the Financial Commissioner will obtain and submit the opinions of selected officers with a view to a reference regarding them to the Judges of the Chief Court.

7. As regards fluctuating assessments, I am to observe that principles have been clearly laid down with respect to the tracts to which they should be applied. The Financial Commissioner will doubtless consider whether there is anything in the special circumstances of the Dera Ismail Khan District requiring either a further extension of the fluctuating system of land revenue or a modification of its terms. The Lieutenant-Governor imagines that no such necessity will be found to exist, as the system of fluctuating assessments has a wider application in the Dera Ismail Khan and Bannu Districts than in almost any other district of the Province.

8. As regards the diminution of clerical work, steps have already been taken in this office to reduce the present burden of annual reports and other correspondence thrown upon the executive officers of the Province, and it is not necessary to seek for further opinions on this point. Sir Charles Aitchison is about to address the Government of India on the subject of annual reports, and a further communication regarding this question will be made to the Financial Commissioner hereafter.

9. Orders regarding the summoning of agriculturists during the harvest season already exist in rule 12 at page 32 of the second edition of the Circulars of the Chief Court of the Punjab. Should it be considered desirable to suggest the issue of any further instructions in this regard, proposals can be submitted accordingly.

10. The Lieutenant-Governor will be glad to receive the opinions of officers whom the Financial Commissioner may desire to consult within three months from the present date.

No. 4362, dated 19th June 1885.

From—J. A. Grant, Esquire, Offg. Junior Secretary to the Financial Commissioner, Punjab,
To—Certain officers.

I am desired to forward a printed copy of certain correspondence which has passed between this office and Government regarding a memorandum

written by Mr. S. S. Thorburn on the indebtedness of agriculturists in the Dera Ismail Khan district, and to request that you will favour the Financial Commissioner with your opinion on the questions raised and the remedies proposed.

2. I am to invite your special attention to paras. 5 and 6 of Mr. Fanshawe's letter of the 22nd ultimo.

No. 2309, dated 1st August 1885.

From—Lieut.-Col. G. Gordon Young, Commissioner and Superintendent, Jullundur Division,
To—The Junior Secretary to Financial Commissioner, Punjab.

I have the honour to reply to your Circular letter No. 4362, dated 19th June last, forwarding for opinion certain correspondence regarding a memorandum by Mr. S. S. Thorburn, on the indebtedness of agriculturists and the remedies proposed by that officer.

2. The tenor of the remarks of His Honor the Lieutenant-Governor, in the Junior Secretary's letter No. 507, to your address, and the Officiating Financial Commissioner's remarks in para. 18 of your letter No. 1189, dated 24th October 1884, show that it is not desired that officers consulted should follow Mr. Thorburn over the very wide range of political and economical questions he has raised, but that attention should be confined to two points, *viz.*, the exemption from attachment and sale of a portion of the cultivator's share of the produce of his holding, and (2) the extension of the term of limitation at present in force, in rural debt suits, from three to six years. Colonel McMahon wished also to refer the question of abolishing imprisonment for debt in the case of zamíndárs; but His Honor has said in para. 4 of the letter quoted above, that opinions on this point need not at present be asked, as the whole question of imprisonment for debt is already before the Government of India with a view to legislation, and an opportunity for an expression of views on this point will hereafter be given to those officers whose opinion is desired.

3. With reference to the first point, I am most strongly of opinion that a portion of the cultivator's share of the produce of each harvest ought to be exempted from liability to attachment, in common with the implements of husbandry and plough cattle which Section 266 clause (*b*) of the Civil Procedure Code already exempts. Indeed, it seems to me little less than a mockery to tell a man who has no pecuniary means, that he may retain his plough and cattle, but not the fodder on which the latter are to be fed, or the grain from which the seed for the next crop is to be supplied, and his wife and family and himself kept from starvation; and I do not think a Judge would do grave violence to his conscience, or to common sense, if he held that "implements of husbandry" must include seed grain, and grain for the support of the cattle and the cultivator and those dependent on him.

4. But when an attempt is made to declare *what portion* of the crop is to be exempted, the difficulty arises. In some instances a fourth, a third or a half may be all that necessity demands; in others, where the holding is small, and the man already lives from hand to mouth, nothing less than the whole crop may suffice for his support till next harvest.

5. Therefore, in each case it seems to me it must be left to the discretion of the Court executing the decree, to determine what of the crop on the ground or on the threshing floors is absolutely necessary to sustain the man and those absolutely dependent on him, and to feed his cattle, and exempt so much from the grasp of the creditor. This need not in practice be really so difficult a task as it at first sight appears; a rough estimate of what the earnings of the family may come to, would first be made, if they were of a class and ages able to earn anything, and then a calculation of what their requirements in the way of food would be, and orders passed in accordance with the result.

6. This would certainly give a very large measure of relief to the agricultural debtor, and save many a family from absolute ruin; and yet I do not think it would go so far as to affect the credit of the class in the market, which is to be avoided.

7. As to the second point, the extension of the term of limitation from three to six years, His Honor has indicated that, in his opinion, any measure of this sort should be of general application, and not made specially in the interests of agriculturists or confined to the case of "agricultural debts" (which by-the-way is a somewhat vague term, if I may be pardoned for saying so, and likely to give rise to difficulties of interpretation, if imported into the discussion).

8. I entirely concur in this view, and consider it would be invidious and unwise to make any such exception in favour of the agricultural classes; nor are they alone the people who complain of the operation of the present law. It is believed that the money-lenders and shop-keepers would themselves welcome an extended period for suits for money lent, with or without a bond, or for goods purchased, in as great a degree as the debtors in whose behalf this question has been raised; probably every officer who is consulted will endorse Colonel MacMahon's statement, that there is "a general consensus of native opinion to the effect that the reduction of the period of limitation for suits for debt has operated very prejudicially to the interests of the cultivators," and I would add also that it has done little or no good to the baniah and money-lender.

9. Though not an argument which should be allowed much weight in a discussion of this sort, I may add that, an extension of the term for debt suits to six years would probably reduce the litigation in the province by a very large percentage: it is impossible to venture on an estimate of what this would reach, but if it was as much as a third of the whole, I should not be surprised.

No. 1820 G., dated 8th August 1885.

From—Major R. P. Nisbet, Deputy Commissioner, Ráwalpindi,
To—The Junior Secretary to Financial Commissioner, Punjab.

With reference to your Circular letter No. 4362, dated 19th June 1885, reply to which has been delayed owing to pressure of other work, I have the honour to state that, early in November 1884, I read the memorandum written by Mr. S. S. Thorburn on the indebtedness of agriculturists in the Dera Ismail Khan District, and in an extended tour for some months subsequently in the Deraját Division, I had opportunity of discussing the question with many intelligent Government officials, natives and others, and of forming an opinion on the subject. I gleaned much information from Rai Gunga Rám, Extra Assistant Commissioner, whose experience of Dera Ismail Khan and other frontier districts entitles his opinion to respect.

2. The evil which Mr. Thorburn brings to notice certainly exists in the Dera Ismail Khan District, but not more so than in Dera Ghází Khan, Muzaffargarh, Mooltan, Jhang and those districts which have a large community of thriftless, unintelligent and indebted Muhammadan cultivators.

3. Special legislation for their relief in this or other frontier districts has not been shown to be necessary, but if, as pointed out in paras. 5 and 6 of Mr. Fanshawe's letter of 22nd May 1885, the proposal to exempt from attachment and sale a portion of the cultivator's produce, so as to leave him food for himself and his family, and seed grain for future cultivation, and in the same way to exempt the absolute necessaries of all classes of the people can be legalized, it will afford valuable protection and relief. Again, I should be glad to see an extension of the period of limitation for suits for debt over that now allowed by law from three to six years.

4. I have observed with very great satisfaction the discouragement given recently by the Chief Court of the Punjab, to the enforced sales of land for debts due by agriculturists, by the refusal of such applications, and their approval of the action of the Courts that intelligently pass orders, either fixing interest at fair rates irrespective of pseudo contracts between parties and the allowing of time for payments by instalments, or otherwise where there is hope of the zamíndár's prospects improving. If these principles are only maintained, and allowed fair play, then special legislation will be unnecessary to save those zamíndárs, who, with two or three good harvests, will save after the claim against them has been reduced to what is just; but if not, then the sooner a lazy, thriftless,

bankrupt zamíndár is replaced by a smart enterprising farmer, such as the Hindú creditor generally turns out, the better it will be for the country. It is only necessary to protect industrious zamíndárs, and this can be done without special legislation, it is useless trying to help the lazy and profligate zamíndár.

5. A great and growing evil Government have to consider in this matter, and which the recent reorganization of the Punjab Commission will not alleviate, is the want of intelligence of a great number of the Native Courts, especially Munsiffs' Courts, and their ignorance from previous position and training of the circumstances of zamíndárs. The decrees of these Courts are executed by a too literal interpretation of the law only, and a zamíndár is ruthlessly sold up and his goods go for a tithe of their value, whereas, if instalments had been fixed, a good harvest or two might have enabled the judgment debtor to settle every thing. Again, much hardship results from the corruption and carelessness in the Sheriffs' department of Civil Courts in conducting auction sales. The more careful supervision of Subordinate Courts by Superior Courts would do much to remedy these evils.

6. The recent division of the Judicial and Revenue branches in the Púnjab threatens to deprive officers in the former of much valuable information about the resources of the people of particular parts of the country and the result of particular years' harvests, which co-operation with the District Officer would afford them. I am afraid that co-operation will grow less year by year, and an acquaintance with the wants, feelings and condition of the zamíndárs and indeed all classes of the people will, as a fact, be entirely wanting hereafter to officers, whose experience becomes confined to judicial appointments at centres from which they never move to mix in friendly intercourse with the people.

7. I was much struck in the Derajät Division, on returns specially called for, with the disproportionate number of Muhammadans employed in the different Courts and departments of the districts. No doubt the reasons assigned, and chiefly the difficulty of obtaining highly educated Muhammadans capable or willing to take service in those parts were true; but the inevitable result is that, in disricts admittedly much in debt to a small but united community of Hindu money-lenders, the Government officials are themselves largely recruited from the same source, and the union of a common sympathy of these two classes presses very heavily on the Muhammadan cultivators and others when brought into court.

8. I do not think it may be out of place here to sound a note of warning as to what, in a year or two, will, I am certain, flood the local courts with suits for debt owing to the change in the system of registration of deeds, and the appointment of non-official Sub-Registrars. Bonds are by this agency now promptly registered in a *quasi* private house by a non-official only eager to make a livelihood from fees. No questions are asked and the wholesome fear a dishonest money-lender felt formerly in submitting a bond to even the hasty scrutiny of the Registering Officer, when a Government official, sitting in a public court at time of registration, is entirely wanting. Only deeds relating to land, in which registration is optional, are still registered by the tahsíldár or other Government official, but in all cases the zamíndárs' land will hereafter be attached and proposed for sale by courts executing decrees for debt and interest on bonds now registered before the non-official Sub-Registrar, and a greater door than ever is opened for fraud on zemíndárs and on all the poorer classes of the people by the appointment of non-official Sub-Registrars.

9. If, as I believe, zamíndárs are peculiarly liable to be imposed on, then I think certain protective measures might be designed before admitting bonds given by them to registration. The appointment of special bond-writers who can explain to zamíndárs, before two lambardárs, their legal position, has been worked with excellent effect in some places. The Registration of all bond debts by zamíndárs should in my opinion be only before a Government officer, who might be required to satisfy himself at time of registration as to what are the rights of the executant of the bond, also as to the particulars of the debt, whether the whole is within limitation, and the money really advanced at time

of registration or not, or it might be ascertained that before hypothecating his land, there is no other property, such as jewels or moveable property, that the zamíndár who gives the bond can offer as security. If a scrutiny of this kind was made, zamíndárs would receive much protection, alienations of land would be restrained, claims for pre-emption reduced, and great good result.

10. To return to the particular subject under notice, *viz.*, the indebtedness of the Muhammdan zamíndárs of the Dera Ismail Khan and adjoining districts, I trust the opportunity will not be lost of allowing this class of persons in the Deraját to make a good deal of money, which they would only be to glad to do, if the District Officer would take some little trouble on their behalf, and which would at once relieve a large number of the agricultural class from their present indebtedness. I refer to the opportunity that now offers of giving employment to hundreds and thousands of the local inhabitants on labour required for the Frontier Railway immediately to be commenced. It only requires very slight organization for the District Committees to undertake the contracts for earthwork and simple masonry, worth lacs of rupees; all which money can be kept in the districts instead of going into the pockets of contractors from a distance who will still collect labour locally; but pay only a quarter of what could be made if short lengths of the line were constructed by the villagers themselves without the intervention of middle men or contractors. All that is required is a good local overseer and one or two subordinate overseers to supervise the work, and assist the tahsíldárs who should apportion the line among villagers who would only be too glad to make money, and whose indebtedness is well known, an arrangement being made to employ those worst off and to reserve a large portion of the wages earned towards liquidation of their debts. A scheme of this kind, if only heartily worked by the District Officers, would add greatly to the material prosperity of the districts through which the new line is to run, and secure a large sum of money which would go far towards relieving the present indebtedness of the zamíndárs. I trust this golden opportunity may not be lost.

No. 520, dated 7th July 1885.

From—Major J. B. Hutchinson, Deputy Commissioner, Mooltan,
To—Offg. Junior Secretary to the Finl. Commr., Punjab.

With reference to your Circular letter No. 4362, dated 19th June 1885, forwarding for opinion a memorandum by Mr. S. S. Thorburn, on the indebtedness of agriculturists in the Dera Ismail Khan district, I have the honour to reply that, after careful enquiry, I find that to a considerable extent the same process seems to be going on in this district. The land is gradually passing out of the hands of the Muhammadans into the possession of the Hindús, and this is at a gradually increasing rate.

The following table shows the extent of land mortgaged and sold in this district in 1880-81 and 1884-85.

	1880-81.	1884-85.
	Acres.	*Acres.*
Sold	8,477 ...	15,576
Mortgaged	21,423 ...	42,532

I think that Mr. Thorburn has grasped the real reason in para. 22 of his memorandum, when he states that the Muhammadans are ignorant, improvident and disunited, while the Hindús are naturally intelligent, thrifty and have great powers of combination. As long as these are the characteristics of the two nations, it is quite clear that the Muhammadans must gradually go to the wall, and no legislation or fostering care on the part of our Government can possibly help them. The Hindú's one aim is to get possession of the land, and to do this they use every art. Once in possession as owners, I find that they make excellent landlords, they advance money for improvements, and are not hard on the tenants.

The settled peace which has followed our rule in the Province has, of course, favoured the Hindús, but I think our laws have also tended to help them. The indebtedness and ruin of many of our large old land-owners may be traced

to the lower classes of legal practitioners. In England, if a landlord has a dispute, he puts the matter into the hands of his solicitor who, in consultation with the solicitor of the opposite party *does his best to settle matters out of court.* In the Punjab exactly the contrary seems to be the practice. The one object of many pleaders seems to be to get their clients into court, and to carry them right through to the highest court of appeal, and as often as not to ruin.

Any steps that can be taken to keep down litigation and to save an unfortunate litigant from ruin and starvation, would, of course, be steps in the right direction.

The two points to which my attention is principally called in these papers, and on which my opinion is asked are—

(1.) Exemption from attachment and sale of a portion of the cultivator's share of produce.

(2). Extension of limitation in suits for debt.

As regards the former, I would point out that the Legislature has already recognized the necessity of exempting a cultivator's plough, oxen, &c., from attachment, the object being that he should be able to continue his work and cultivate his fields as usual. It is obvious, however, that he cannot do this without food for himself and family; I, therefore, think that the exemption of a portion of the produce from attachment would not only be right, but is necessary. The quantity to be so exempted must depend on the number of mouths to be fed, and should, I think, be left to the discretion of the courts within certain fixed limits.

The next point is one which has often been brought to my notice, and it is one on which considerable difference of opinion exists. I think myself it would do no good now to make any alteration in the limitation for suits even for agriculturists. When the term was shortened, it undoubtedly had the effect of bringing many suits into court, but they would have come in sooner or later, with the result that, the transactions having occurred long before, it would have been very hard for the ignorant country people to prove payments. A short period of limitation brings transactions within a reasonable time for witnesses to recollect, and tends to render fraud much more difficult and liable to discovery.

My experience of agriculturists, especially Muhammadans, leads me to the conclusion that a long period of limitation only leads to recklessness. They would only go deeper into debt and be more thoughtless, if they thought the day of reclaiming was further off. Every year the chances of getting out of the clutches of the baniah would be lessened, and it is, I think, much better for them that they should be brought up as fast as possible when there may be some chance of saving their lands from sale.

In this district it used to be the custom to collect the "Zarinagha" payable for non-attendance at the clearance of canals almost a year after; the result was that the zamíndár, knowing that punishment for idleness and carelessness was distant, could with the greatest difficulty be brought out to work. He always had a hope that something would turn up before the fine was collected—a good crop or a windfall from some source or other; now the fine is collected as soon as possible after it is incurred, and the punishment being close, he is more easily got to work. This is, I think, instructive as regards the question in hand, if he know that the baniah would probably put off suing him for a long period, he would be more reckless and go deeper into debt, and he would, too, have to pay compound interest.

In old times the custom used to be, "jins dúná, dam deora," whether the loan was for a short or long period. That is all changed now; the baniah has learnt to make up his accounts periodically and add on interest every time. Whatever change might be made in the law of limitation, he would not unlearn that, and return to the old custom. Moreover, I think that all change in law should be avoided as far as possible; changes only unsettle the people and make them dislike our rule.

No. 907, dated 7th July 1885.

From—C. M. Rivaz, Esquire, Deputy Commissioner of Kángra,

To—The Junior Secretary to Financial Commissioner, Punjab.

I have the honour to acknowledge receipt of your Circular No. 4362, of the 19th ultimo, asking for my opinion on certain questions raised and remedies proposed by Mr. Thorburn, in a memorandum on the indebtedness of agriculturists.

2. The gradual and, under present conditions, necessarily ever increasing transfer of the ownership of land from the agricultural to the money-lending classes, not only in the Deraját, but to a greater or lesser extent in every district of the Punjab, is, of course, a fact ever present to every District Officer, and I confess that I am among those who view with anxiety its probable results in the future. The unrestricted powers of voluntary alienation, by sale or mortgage, was, in my opinion, a fatal gift to the agricultural community. Either all such alienations should have been prohibited, except when allowed for sufficient reasons by the revenue officers, or at least provision should have been made for compelling the registration of all such transactions before the revenue officers, who should have been given power to disallow the transfer for sufficient cause, such as inadequate consideration, absence of real necessity for the transfer, and the like. I fear, however, that any action now in this direction, even if deemed desirable, will be considered impracticable. "The gods themselves cannot recall their gifts." All that is probably possible, is to do something for the protection of the agricultural debtor when his creditor has employed the machinery of our courts against him. In connection with this, two points are noticed by the Punjab Government as deserving consideration, namely, (1) the extension of the present short period of limitation for suits for debt, and (2) the exemption from attachment and sale in execution of decree of a portion of the cultivator's share of the produce.

3. As regards the first of these points, the extension of the present period of limitation to one of six years for all debt suits, whether on bond, ledger accounts, or parole, would be, I think, an indisputably desirable measure. As regards the second proposal, I have had practical experience of the working of such a measure in Kapúrthala, where it was introduced in 1879 by Mr. Mackworth Young, and further elaborated by myself. Under the rules on the subject in force there, in the case of owners and tenants paying revenue or rent in cash, only two-thirds of the grain and one-third of the straw in ordinary crops, and three-fourths of zabti crops, can be attached in execution of decree, the decree-holder being required to pay into court, prior to attachment, the whole of the revenue or rent charges on the crop, and, in the case of tenants paying rent in kind, half of the tenant's share of the grain in ordinary crops, and three-fifths of such share in zabti crops. The results of introducing these rules in Kapúrthala has been that applications for attachment of crops in execution of decree cases have, in all probability, owing to the high assessment rates in force, and to the provision regarding the decree-holder's liability for the revenue demand, very considerably diminished. On the other hand, I fear that the effect of the restrictions thus imposed on decree-holders has been to make money-lenders more persistent in requiring mortgage security from agriculturists before advancing money to them. Similar rules would, however, probably be accepted with a better grace by the money-lending community in British territory, where the revenue demand is so much more moderate than in a Native State.

4. My opinion then, in short, is that the extension of the period of limitation in debt suits would undoubtedly be a desirable measure, and that rules exempting from attachment and sale a portion of the cultivator's share of the crop would probably, on the whole, benefit the agricultural debtor, though somewhat diminishing his credit.

No. 1303, dated 3rd July 1885.

From—F. W. R. Fryer, Esquire, Deputy Commissioner of Hazára District,

To—The Officiating Junior Secretary to Financial Commissioner, Punjab.

Acknowledges the receipt of Mr. Thorburn's memo. on the indebtedness of the people in the Dera Ismail Khan.

I have the honour to acknowledge the receipt of your circular letter No. 4362, dated the 19th instant, forwarding a memorandum by Mr. S. S. Thorburn on the indebtedness of agriculturists in the Dera Ismail Khan district, and to express my opinion on the question raised and the remedies proposed.

2. In this district the indebtedness of the ordinary agricultural population is not very great. By the ordinary agricultural population I mean the small landowners who mostly cultivate themselves, but the landed gentry of the district are, almost without exception, hopelessly involved. I mentioned this subject in the last Civil Report of this district. I think that the indebtedness of the landed gentry in this district is due mainly to the fact that they used formerly to receive their incomes wholly or partly in kind, whereas since the settlement they have been obliged to content themselves with *fixed cash income.* They have continued the lavish expenditure to which they were accustomed, and have found it a very different thing to be profusely hospitable when their supplies have chiefly to come from the local dealer to what it was when their granaries were full of grain. I am not prepared to say that the class to which I allude would not have become indebted under any circumstances; but I do not think they would ever have become so deeply involved as they are now.

The landed gentry of the Hazára district much indebted but not the agricultural population.

3. I foresee much difficulty in the future as regards this class. They are very prolific and have large families. Their Government emoluments pass to the eldest son, whilst the real estate is divided. The eldest son and each succeeding eldest son is worse off than his father, owing to the sub-division of the property. The younger sons are left poorly off. They have always been accustomed to live in a certain style which they can no longer maintain. All Government employment is closed to them, as they have generally little or no education, and will not enter the army or police in the lower ranks, and they will form a large and increasing body of mal-contents, who will gladly avail themselves of any chance of disturbing the established Government, in order to recover the position and influence which their ancestors had when might was right, and before the scion of a good old family, which has served the Government on many an occasion, had to submit to be ruled by the son of a petty Hindú, who has been successful in passing through the curriculum of a University and whose education has been paid for in part by the very men whose sons he has superseded. No doubt the son of the Khan should profit by the opportunities which he enjoys alike with the son of the banya, but, as a matter of fact, he does not and will not do so, and is consequently left behind in the race of life and becomes sullen and disaffected.

Probable gradual decay of the leading country families.

4. It would, in my opinion, greatly tend to alleviate the position of the native gentry if a Military College were established through which their sons might obtain commissions in the army. From this class, too, náib-tahsíldárs ought mostly to be appointed, and the Police should be largely officered by them. For the indebtedness under which the native gentry suffer, I can think of no remedy. Land banks, which would lend money at a low rate of interest, would be of great help, but any possible measures that have been or may be proposed will only postpone the evil day, and the younger members of good families will eventually sink to the level of the ordinary working population. In the Deraját, I am aware that it is not the landed gentry who are involved in debt, so much as the ordinary agricultural population. In the Dera Gházi Khan district the chiefs of tribes were carefully protected at settlement from the loss of income, position and influence, which they would have suffered had their incomes been made payable in cash. They are, therefore, well off and fairly free of debt. The agricultural population is much in debt, but this is mainly the consequence of the improvidence of the people. To some extent the agriculturist of Dera Gházi Khan may be obliged to incur debts now and again, owing to the precarious nature of the harvests, but one good harvest ought to clear off the debts of five years of bad or indifferent harvests, and usually does so.

Measures for the improvement of the position of the native gentry.

Special remedies proposed by Mr. Thorburn regarding which an opinion is asked by Government.

5. Of the proposals made by Mr. Thorburn, I am quite in favour of the following :—

I. A portion of the cultivator's share of produce should be exempt from attachment and sale.

There is no doubt that the cultivator should be allowed to retain enough of his produce for seed and for the support of himself and family and plough cattle

until the next harvest. The justice of this proposal is self-evident, but it will no doubt leave but little from which the creditor's claims can be met.

II. The period of limitation for suits should be extended.

The extension will be beneficial. It should, of course, apply to all debts. This extension is generally desired by all classes, and will no doubt be of benefit to the debtor as affording him increased facilities for payment.

Other remedies proposed by Mr. Thorburn.

6. Besides the remedial measures on which an opinion is specially asked in the Secretary to Government's No. 507, dated 22nd May, the question of imprisonment for debt is mentioned as being already before the Government of India. I am entirely of opinion that imprisonment for debt ought to be abolished, unless there is proof of fraud or wilful concealment of property. I also think Mr. Thorburn's proposals for the amendment of the Insolvency Section of the Civil Procedure Code worthy of consideration. His first proposal is that courts should be empowered to discharge judgment-debtors, being hereditary agriculturists, owing Rs. 50 or less, on payment of as much as the Court thinks they can pay. This is, I think, a good proposal; but his second proposal for legalizing a declaration of insolvency in favour of hereditary agriculturists owing Rs. 50 or upwards upon their simple application and proof of indebtedness, would flood the courts and utterly destroy the credit of hereditary agriculturists. The suggestion of the Officiating Financial Commissioner, in para. 14 of his Junior Secretary's No. 1189, dated 24th October 1884, regarding the restrictions which may be placed on the rate of interest which a court may decree against a peasant, seems to me to be very appropriate. The proposal would properly extend to all debtors whether peasants or not. I believe that, if it were left to the discretion of the courts to decree interest at such rates as they might deem reasonable, such a measure would be received with general acclamation, practically many courts do consider the question of interest in the spirit of the Chief Court's Circular No. XXIV, but many do not, and the alteration in the law advocated by Colonel McMahon would, in reality, merely introduce uniformity of practice.

Proposes another remedy.

7. By Section 210 of the Civil Procedure Code, courts are authorized to decree payment of debts by instalments, but, if payment of decree by instalments is not ordered by the court giving the decree, it cannot be afterwards ordered in execution of decree; many decrees have come before me in which payment by instalments has not been ordered by the original court, and yet payment can be arranged in no other way; generally the decree-holder will agree to receive payment by instalments, but sometimes he will not do so till he has first failed to obtain satisfaction of his decree by attaching the debtor's property. I consider that the court executing a decree ought to have power to order it to be paid by instalments.

Summoning of agriculturists during the harvest season.

8. The orders contained in rule 12, page 32, of the volume of Circulars of the Chief Court, regarding the summoning of agriculturists during the harvest are, I think, sufficient. They are, perhaps, not always acted up to, but, if they are overlooked, this is the fault of the courts. No further instructions seem to me to be necessary in this regard.

Mr. Tucker's covering docket, No. 867 dated 6th August 1887.

Note on Mr. Thorburn's Memo. of 29th June 1884.

There is no doubt that a large proportion of the Muhammadan proprietors in all the districts with which I am acquainted are generally getting more and more indebted.

It is difficult to put forward any practical suggestions for remedying this state of things.

The weight of the assessment does not appear to influence the amount of indebtedness. The proprietors of rich, lightly assessed lands are often the most heavily indebted. In speaking of the class which we are discussing, the best term to use is perhaps that of ryot, which means the cultivating holder of the land whether proprietor or tenant.

These ryots under our system live better and work less than they used to do. The standard of comfort is higher. They are far less ready to supply *bigár* for public purposes, such as the mending of roads or clearing of canals. At the same time they are getting more litigious day by day. A man, who is in constant arrears with his revenue, will raise any amount of money for law suits.

The best cure for the more indebted tracts would be to put them under the old system. Under that system, the ryots would pay a fair share of the crop, and have to furnish a fair amount of *bigár*. The old system, too, insisted on a man's cultivating his land properly, otherwise the land would be given to some one else. Such a system destroys credit, which is the bane of the majority of these ryots.

At the same time the ryot would have neither time nor money for litigation. In old days most villages were farmed to lessees, who exercised a good deal of authority, and who, except in cases of great oppression, were not interfered with by the ruler. Now, even where the *battai* system exists, the proprietor or lessee, as he may be, is greatly hampered by our system of law. If a ryot refuses to pay rent or to till his land, he can do nothing to him without first bringing a law suit. In old days he used to take his rent and oust any cultivator who failed to supply the necessary *bigár* or to keep his land fully cultivated on his own authority. If assistance was required, this was given in the shape of a general order affecting the whole cultivating body, which was easily carried out there and then. Now he must bring a separate suit against each ryot, everything being done according to law. Each individual interested must be duly represented, including minors and absentees. All this gives him much trouble. In old days, if a lessee had a quarrel with a refractory villager, the representative men of the village would be called up, the matters in dispute inquired into, and an order passed which applied to every one in the village, and this is the sort of system that really suits the country far better than what we now enforce.

Our system of civil litigation is most unsuited to a country with land tenures like the western Punjab.

Mr. Thorburn considers that our law presses unfavorably on the poor proprietors. As far as I can judge, it presses much more hardly on jágírdárs and large land owners, who find themselves greatly crippled by it.

The bulk of these impoverished ryots, though they may grumble and say that in the Sirkár's Ráj they have become hungry, still prefer their present thriftless indebted style of living to the old system. The ryots of the Crown villages held by Gholám Haidár Khán, Kyáni, near Kohát, are always wishing for a cash settlement. Gholám Haidar Khán is an excellent old gentleman, who is very kind to his people, and takes nothing but the old customary rents. The ryots, however, would like to be free like their neighbours to get into debt and to sell and mortgage their holdings.

In one way our system of law may press hardly on the zamíndár before he is thoroughly in debt, but on the other hand, when the zamíndár has once been initiated into its mysteries, it affords him boundless opportunities for quibbling and for avoiding payment of his just debts. An independent Afrídi, when he catches a debtor, takes him by the coat and says: "Pay me that thou owest." If he hesitates, he claps him into the stocks. With us a creditor has much greater difficulties to contend with. He hunts his debtor through many courts, original and appellate, and often fails to get paid after all, because the debtor has succeeded in concealing his personal effects, while it is very rarely that the authorities will consent to the sale of the debtor's land.

I am very doubtful whether the abolition of arrest for debt, and the other proposals for the protection of the indigent agriculturist will benefit the class in the long run. At first they will be a relief, but they will destroy future credit. The only way in which most of these men pay their land revenue is by borrowing the money. As soon as the baniya ceases to lend, the zamíndár will cease to pay, and will in consequence be in perpetual difficulty with his revenue. The work of the tahsíldár will increase exceedingly, and the zamíndár will be in a constant state of kúrk tahsíl.

It must not be forgotten that the village baniya performs a very useful function. He generally spends very little on himself, and what he extracts from one zamíndár he at once lends to another.

The baniyas in the Dera Ismail Khan Kachi, when I knew them, used to live in a very poor way. They were dirty in dress and lived on the scantiest fare. A great deal of the profit they made must have been lost in the shape of bad debts. The country would never have got on without them.

As regards Mr. Thorburn's insolvency proposals, I hardly see how the unfortunate Collector, oppressed by all sorts of work, is to manage numberless petty estates for their incompetent owners. The land owners of the Punjab generally own, each man, a few scattered fields. Kham tahsíl only answers when applied to a large compact block.

As regards the special points alluded to by His Honor the Lieutenant-Governor in the Kohát district, it was a standing rule, that a fair proportion of the crop should be exempted from attachment. This is only reasonable. At Pesháwar the Civil Courts are under the District Judge, and matters of this sort are disposed of by him and not by the District Officer.

As regards the short period of limitation for suits for debt, it would, in my opinion, be advisable to extend the period for suits for money due on account stated or on a bond to six years.

No. 226, dated 3rd July 1885.

From—W. E. Purser, Esquire, Settlement Officer, Jullundur District,

To—The Officiating Junior Secretary to Financial Commissioner, Punjab.

In reply to your circular letter No. 4362, dated 19th ultimo, forwarding printed correspondence regarding a memo. by Mr. S. S. Thorburn on the indebtedness of certain agriculturists, I beg to state that I fully agree with the views expressed in paras. 3 to 6 of Officiating Junior Secretary to Government's No. 507, dated 22nd May 1885, forming part of the correspondence, and would undoubtedly adopt the suggestions in paras. 5 and 6 of that letter.

2. It is not only in the Deraját that land is gradually passing from the hands of the agricultural into those of the trading classes, and that the problem presented by Mr. Thorburn has exercised the minds of officers. This problem, which is to make credit as cheap and easy as possible for the careful and prudent, and at the same time to render it practically unobtainable by the reckless and ignorant, seems to me incapable of solution. But I think every effort should be made to prevent the astute money-lender making our courts the medium of taking an unfair advantage over the uninformed agriculturist; and I think the risk of slightly diminishing the facility of getting credit might fairly be run in adopting some of Mr. Thorburn's suggestions. I would not allow agriculturists to be summoned at harvest time, and, to avoid hindrance to work by such a rule, the present September vacation might be changed to some other month. I have more than 10 years ago pointed out how the money-lenders rob the people of their cattle by selling them at nominal prices in execution of decrees. I would allow no cattle of agriculturists to be sold, except at a fair upset price. I agree with Mr. Thorburn, that legal practitioners should be paid in cases of suits for debt against agriculturists by the party employing them, and that, as far as possible, their employment should be discouraged.

3. I am not prepared to recommend further difficulties being put in the way of transfer of land. Many such transfers are not only legitimate but also laudable, and ought not to be discouraged. Attempts to limit the rate of interest would be utterly futile, and would lead to an amount of fraud and perjury far beyond what is found even now. I am not in favour of the Government officials being charged with the management of estates of insolvent agriculturists, except in rare cases, where influential families have become involved; indeed I think it would be impossible for officials to undertake such a task successfully in the case of any but large properties.

No. 2339, dated 21st July 1885.

From—C. A. Roe, Esquire, late Officiating Judge, Chief Court, Punjab,
To—Junior Secretary to Financial Commissioner, Simla.

I have the honour to reply to your Circular letter No. 4362, dated 19th ultimo. The subject of the correspondence therewith forwarded is one on which so much has already been written, and so much more might be written, if all the points raised in it were to be fully discussed, that any addition to the general literature of the subject is a thing to be avoided. I shall, therefore, confine myself to expressing briefly my own opinion on Mr. Thorburn's proposals.

2. I understand that it is the position of agriculturists as proprietors and not as cultivators or labourers, that Mr. Thorburn takes into consideration. And as regards the position of cultivators and labourers, I would only remark, that bad as it may be judged by our standard of comfort, it is certainly no worse than that of non-agriculturists in a similar station of life. I know of no reason why a person should be supposed to have an inherent right "to live and thrive" by agriculture any more than by any other trade. In the Punjab the circumstances generally supposed to confer such a right, *e.g.*, an original proprietary right or a long connection with the land, have almost universally secured to such cultivators rights of occupancy. And the position of cultivators without such rights, and of labourers, may safely be left to regulate itself in accordance with the ordinary laws of supply and demand and freedom of contract.

3. As regards proprietors, I understand Mr. Thorburn's view to be this. From many causes, partly within, partly beyond, their own control, but mainly from the exactions of money-lenders, the proprietors as a body are sinking hopelessly into debt; this debt is resulting, and will still further result, in the transfer of the land to strangers, and a very grave political danger will arise from the preserve (?) of tribes of dispossessed proprietors, who will rightly or wrongly attribute their ruin to the operation of English law, and who will be ready to take advantage of any disturbances, internal or external, which may hold out to them a hope of regaining lands which they believe to belong to them by divine right.

4. Objections might be taken to the doctrine that particular tribes hold land by divine right. It might be said that they gained the land, because they possessed qualities superior to the former occupants, and that they will justly lose it if they allow their qualities to become inferior to the new men now seeking it. It may also be objected that, if we legislate in favour of a particular class, not because such legislation is right and economically sound, but because that class may possibly become discontented and dangerous, we shall certainly not succeed in satisfying every one; on the contrary, we shall make many more enemies than friends, and the end of our well meant attempts will be a disastrous failure. It is also possible to exaggerate the danger of the transfer of land from one class to another. There is hardly likely to be any wholesale dispossession of tribes; the individuals who lose their lands may very probably pass unnoticed into the general mass of the population, and the danger to be apprehended from large bodies of men bound together by ties of blood and the resentment of a common wrong, is one which may very possibly never arise at all.

5. But, assuming all these objections to be satisfactorily disposed of, and that Mr. Thorburn's view of the present position of land owners, and the danger to be apprehended is serious and imminent, the question is how is, it to be remedied? or can it even be remedied at all? Before we attempt to apply a remedy; we must ascertain with tolerable accuracy the cause of the disease. We are told at once that the cause is "our system." To this I demur at once. It is a great mistake to suppose that no transfers of land took place under a Native Government. As a Settlement officer, I have been surprised, on looking over the pedigree tables of villages, to find how often whole branches of the tribe are followed by the remarks "left the village in Sikh times owing to pressure of the revenue, their descendants are now servants in * * " It is true that, under a revenue paid in kind, a small proprietor is *primâ facie* less exposed to risk than when he pays a fixed cash revenue and bears all the profits and losses arising from the variation of seasons. But the Sikh revenue in kind

was a very different thing in reality from what it was in theory. Rarely indeed was a portion of the produce actually taken as revenue. The Government share was set aside, but the zamíndárs were compelled to purchase it at an arbitrary price. In addition to this there were exactions innumerable, and if the proprietor could not meet them, the Kárdár had little scruple, under the plea of arranging for the cultivation, in handing the land over to some one who could; under "our system" the sale of land for arrears of revenue is almost unknown, and even a temporary transfer of a holding from an insolvent to a solvent shareholder, is very rare indeed. There can, I think, be no question that "our system," as far as the collection of land revenue is concerned, causes far fewer transfers of land than any system that ever preceded it.

6. We are told, however, that it is not our revenue administration, but our Civil Courts that are in fault. It is often said that the sale of land in execution of decrees for debt is at the root of all the mischief. I have no reports with me, on leave, to which I can refer, to see on what figures such a statement is based, but speaking from general recollection I should say that there is very small foundation for it. As far as my experience goes, it is a most rare thing for the Chief Court to sanction (and I need hardly say that without such sanction sale is impossible) the sale of ancestral land in execution of a decree for a simple debt.

7. Our courts can, therefore, only be responsible for transfers of land in so far as they enforce contracts made for such transfers. But it can hardly be seriously proposed to declare, that all landed proprietors shall be considered legally infants or idiots and incapable of making a valid contract without the consent of the Deputy Commissioner. If proprietors can make contracts and enforce them against others, they must be prepared to have them enforced against themselves. As regards the general power of a proprietor to alienate his land, "our system" has not openly enlarged it. No doubt it has done so indirectly, for it is simply a natural result of civilization, that property should pass from the tribe to the village, and from the village to individuals. It is only when property has vested in the individual that he can make a valid contract concerning it. Our courts have done little to hasten this change; indeed, their action is rather calculated to retard it. It is true that some recent decisions of the Chief Court have tended to establish a general rule, that it is for the side alleging that alienation is opposed to custom to prove their allegation; but, whatever may be the technical rules for ascertaining the custom, it is custom and not English law which is followed by the courts, and when once the courts have held that, amongst a particular tribe, alienations are contrary to custom, the full control by the individual over his property, which would ordinarily grow up by the natural development of society, is artificially checked.

8. It is lastly urged that, though proprietors must be treated as capable of making valid contracts, yet our courts are not a suitable agency for enforcing these contracts. Now I am fully sensible of the defects of our courts. I know that many of the presiding officers have eminently non-judicial minds, and that all are so driven by excess of work that they often omit to properly examine the parties and witnesses, or fully to weigh even the evidence which they have recorded. But these are defects which affect all classes of litigants alike. It certainly cannot be said that the courts are biased against the agriculturists. To the majority of officers the plaintiff is "a rascally baniya," and the defendant a simple and honest peasant. Even when the officer is entirely free from bias, it is in the great majority of cases on the money-lender that the burden of proof falls, and the court will refuse to decree a claim which may very possibly be true, but which it does not consider proved beyond all reasonable doubt. It has been laid down by the Chief Court that, in dealings between money-lenders and agriculturists, when the terms as regards interest, &c., appear exorbitant, it may be presumed that they they were obtained by undue influence, and the upshot of all the rulings about interest comes very much to this, that the court may decree whatever it thinks fair. Under the new law the District Judge's orders in all cases under Rs. 500 will be final, and if he chooses to disallow interest altogether there will be no means of interfering with his order. Lastly, when the creditor has obtained his decree, the Collector watches most carefully over its

execution, and he not unfrequently sanctions arrangements which compel the decree-holder to accept payment of his decree by instalments extending over 20 years, without any additional allowance for interest.

9. It appears to me that the charge of pressing hardly on the agriculturist is about the last that can be made against our civil courts. No doubt they treat him as capable of making a contract, and they look on a contract as an agreement to be enforced. But any courts pretending to a regular administration of justice must do the same. It is urged by some that any regular administration of justice is a mistake, that all claims against agriculturists should be referred to a committee of his friends, called a village *pancháyat*, who would compel the money-lender to accept half his claim by offering him the alternative of half or nothing. It is needless to ask who is to supervise the working of these *pancháyats*, or, if they were left without supervision, how long it would be before the money-lender succeeded in converting them to his own use, and turning them into engines of oppression, compared to which the present courts are but as whips compared to scorpions. It would no doubt be possible to pass an Act, which, by pretending to refer claims against agriculturists to special courts, would have the effect of reducing such claims by one half. It would be equally possible to pass an Act disallowing the claims altogether. But to do this, however much it might benefit individual debtors, would to the agriculturits as a whole be simply disastrous. The fallacy underlying proposals for legislation of this kind, and the usury laws, is the idea that some particular rate of interest has been fixed as "fair" by a law of nature. Money like any other commodity is worth what it will fetch. You may declare that a man cannot recover more than a certain rate of interest at law, but it is quite impossible to compel him to lend his money at that rate. If you allow him to recover only a certain rate in court, he will take the difference between this and the market rate out of court three times over. If you succeed in destroying the agriculturists' credit altogether, you will no doubt prevent him from alienating his land. But you will equally render it impossible for him to pay the Government revenue, and the abolition of the land revenue is not yet within the range of practical politics.

10. On the whole question, my opinion is that the indebtedness of agriculturists, and consequent transfer of land, is in no way the fault of "our system," but is the natural result of a number of men with little or no capital engaging in a business involving almost more risks and fluctuations than any other. Properties are sub-divided until each family holds what is barely sufficient for its support in ordinary years. It is absolutely certain that in a cycle of years misfortune will come in some form or another, and even the ordinary wear and tear of farm life demands from time to time the outlay of capital. Wells must be repaired or sunk; cattle die, and must be replaced; and the necessary expenditure can only be met by a loan. When a loan has once been incurred, there is little surplus from which it can be paid off, and in course of time, out of a population of petty proprietors a large number, without any extravagance on their part or extortion on the part of the money-lender, must become hopelessly insolvent. We may deeply regret that it should be so, but I do not think we can do any thing to prevent it. On the contrary, I feel convinced that all our other efforts to do so, by attempting to regulate interest or by throwing obstacles in the way of the money-lender recovering his money, can only result in injury to the very persons they are meant to benefit.

11. It only remains for me to notice briefly the two points specially referred to in the Government letter, *viz.*, the three years' limitation for suits, and imprisonment for debt. I doubt if an alteration of the law on either of these points would benefit the agriculturist. To enlarge the period of limitation would only put off the day of reckoning, and give still further time for interest to accumulate against the debtor. As regards imprisonment for debt, its abolition would of course, as remarked by His Honor the Lieutenant-Governor, have to be universal, if carried out at all. I much doubt if it is used at present for the oppression of the really poor, and the provision of the law, that any debtor can at once obtain his discharge on surrendering his property, seems to me to be a sufficient protection to him. We could hardly propose to discharge him from his liabilities without such a surrender.

No. 177, dated Delhi, the 17th August 1885.

From—A. W. STOGDON, Esquire, Divisional Judge, Delhi Division,
To—Junior Secretary to Financial Commissioner, Punjab.

IN reply to your Circular letter No. 4362, dated 19th June 1885, I have the honour to state that I am in favour of the proposal to exempt from attachment and sale a portion of the cultivator's share of the produce, and I consider that this exemption should apply to the absolute necessaries of all classes.

2. I am of opinion, however, that the period of limitation fixed for the recovery of ordinary debts is not too short. The majority of debtors do not pay their debts, because they have not sufficient means to do so, and they are only too willing to stave off the day of reckoning by agreeing to pay interest at exorbitant rates. It is for their interest that they should be brought to book as soon as possible, and that their affairs should be adjusted by the courts before their debts have assumed such proportions as to be altogether unpayable. The courts have discretion in ordinary debt cases in the absence of any agreement to the contrary to decree payment of the amount decreed by instalments, and to refuse to allow interest upon the sum decreed, and I believe that, as a rule, the interests of debtors are as much considered as those of creditors. Indeed, I do not feel sure that a curtailment of the present limitation of three years would not act as a boon to debtors The majority of debt cases are on account of dealings between money-lenders and agriculturists. The money-lender advances money for payment of the Government revenue, purchase of cattle and seed, and expenses of marriages and other purposes. After each harvest the debtor liquidates as much of his debt as possible by payments of grain and cattle and sometimes of cash. As long as he is thriving and fairly punctual in his payments, the best relations subsist between him and his creditor, who is always ready to let him have money; but if his payments fall off in consequence of bad seasons, losses of cattle or extravagance, the money-lender refuses to let him have any more money, and after repeated dunnings eventually sues him when the period of limitation is about to expire for the principal sum due by him plus a very large amount of interest, which he cannot pay. How much less, therefore, will he be able to pay an amount swelled by the addition of interest for another two or three years. Debtors are of two classes, those who can pay and will not, and those who cannot pay. The former class should be made to pay at once, and it is for the benefit of the latter that their debts should be brought to a head, and so to say consolidated before they have accumulated sufficiently to overwhelm them. I have no doubt, that both agriculturists and capitalists would hail with delight an extension of the period of limitation, the agriculturist because of the postponement of the ultimate day of reckoning, and the capitalist because of the prospect of his eventually getting the agriculturist completely into his power and of obtaining his land; but whether they would equally benefit by the extension is quite another question.

No. 1048, dated 5th August 1885.

From—J. A. E. MILLER, Esquire, District Judge, Kángra,
To—The Junior Secretary to the Financial Commissioner, Punjab.

IN compliance with your letter No. 4362, dated 19th June, asking for my opinion on Mr. S. S. Thorburn's memorandum on the indebtedness of agriculturists, I beg to offer the following remarks, which I have made as brief as possible, as the Financial Commissioner will doubtless receive many other opinions of greater value than mine.

2. Opinions are invited specially on the following two remedial measures proposed—

(1) Exemption from attachment of a portion of the crop of an agriculturist.

(2) And, extension of the period of limitation for money suits from three years to six.

3. I do not agree with the view that, if any measure is adopted in either of these directions, it must be a measure that will uniformly affect *all* classes of debtors. I have no theoretical horror of "class" legislation. The statute

book is full of it, and necessarily so. There are many subjects in which the "class" question is the vital point which cannot be ignored.

The very essence of the present controversy is, that it is a question between capitalists and agricultural debtors, and in my opinion any attempt to keep this fact out of sight, and to look for remedies that will affect all classes alike, will tend to defeat the object in view. Let other classes be dealt with according to their respective needs, and let the interests of no class be neglected, but if it can be shown that any class has special requirements of its own, special measures should be adopted to meet the case.

4. Further, it is idle to ignore the fact, that Mr. Thorburn's strongest argument is the *political* one, that it is the interest of the *State* to interfere for the protection of the Muhammadan agriculturists of the Western Punjab, and to remove from them the temptation to find some stern remedy of their own. To *this* argument it will not be sufficient to reply that all men are equal before the law, and all interests must be equally protected. Many interests are antagonistic to the well-being and to the very existence of the State, and it is necessary for the controlling power to protect those that are liable to be crushed to the ground, and to curb those that are dangerous to the commonwealth.

5. Whether there are any such dangers lurking beneath the present smooth surface is a question of fact for experts to decide, or which the event will reveal. But if the dangers are as pointed out by Mr. Thorburn in his 22nd para., then the subject is of the gravest importance, and will require skilful statecraft to deal with it.

6. If the gradual transfer of land from the agricultural to the shopkeeping class is not in itself an evil, and if the rapid subjection of a powerful and warlike majority to a small, hated and sordid, though perhaps intellectually superior, minority of an antagonistic creed, is nothing to be alarmed at, then all these discussions are useless and may as well cease at once. But it is difficult to conceive that even the most fervent believers in political economy, and in the inherent tendency of events to shape themselves aright, can think such results, in a country like India, to be of no consequence.

7. Since writing these words, I have come across the following striking passage in the speech of Lord Lytton on the Deccan Relief Bill:—

"I would ask the Council, is it not obvious that, if in any part of India, the actual cultivators of the soil see, not only the proceeds of their labour, but actually their personal freedom passing from them into the hands of a class whom, rightly or wrongly, they regard as authors of their ruin, and under the protection of laws, which, rightly or wrongly, they regard as the engines of it, the bitterness of sentiment, the sense of hopelessness and irremediable wrong engendered by such a state of things must be a chronic incentive, if not to social disturbances, at least to personal crime."

8. Even if it be admitted that the general question that Mr. Thorburn raises is not a *new* one, the important question still remains "is he *right* or is he *wrong* in his conclusions and suggestions generally?" The general effect of the opinions now being collected will probably be to express a hearty sympathy with the views expressed, but a considerable hesitation as to what remedies are advisable and practicable. But something will be gained if the general truth of the picture he draws be authoritatively admitted and his aspirations be encouraged.

9. For instance, is Mr. Thorburn right or wrong in making, as he has done (see para. 27), a rule in his district that "in every case a minimum of 40 maunds of grain is to be exempted from attachment?" What have the Civil Courts and the Pleaders to say to this innovation? If it can be adopted without any further authority, why are opinions called for as to whether the law should be amended on the point?

10. I remark in passing, that the Legislature itself has admitted the principle of class legislation on this point, inasmuch as the *houses* of *agriculturists* are exempt from attachment; while the houses of *non*-agriculturists are

not so exempt. The agricultural implements and a portion of the cattle of an agriculturist are exempt (under Section 266) on the ostensible ground that they are indispensable to the agriculturist's subsistence. It would be carrying this principle only a very *little* further, to hold that a supply of *seed grain* is also indispensable, for this is the only means open to him to raise his next crop. Without this he is ruined. But it is going a *very great deal* further to enact that debtor is to be allowed to keep sufficient *food* grain to support himself and family till next harvest. This is equivalent to enacting that the debtor is to be put to no inconvenience whatever on account of his debts. He and his family are to live in comfort till it is quite convenient to them to pay out of a surplus fund. Ordinarily a sufficiency of food grain for six months is very nearly all the property a poor agriculturist possesses, and it is only by putting pressure on this point that the creditor can hope to realize his debt.

11. What guarantee will there be that, if this property is exempted from attachment, the needy debtor will not sell it to some one else and decamp with the proceeds?

12. The various processes of arrest, attachment, imprisonment, sale, &c., at the command of the creditor rest on the general principle, that he is entitled to *starve* his debtor into payment, and that the debtor, rather than starve, will find some means of raising the money. But if he is absolutely unable to pay, and has not been grossly dishonest, then he ought to have some sort of insolvency protection.

13. A creditor can keep his debtor in the Civil Jail only so long as he pays for his support. Would it not be possible in a similar way to provide that the decree-holder is entitled to attach and bring to sale a debtor's *food* grain, only on condition that he gives him a *subsistence allowance* till next harvest? The allowance to be fixed with reference to the circumstances of each case, the number of the debtor's family, &c., and to be paid monthly in grain or cash. This would keep the security in the hands of the decree-holder, who is fairly entitled to it, instead of in the hands of the debtor who might possibly make away with it.

14. As far as my experience goes, I have found that the indebtedness of the agriculturists, and the distress necessarily attaching thereto, is caused not so much by the avarice and hard-heartedness of creditors, or the mechanical working of our courts, as by the *improvident character* of the peasantry, to a prevalent idea that debt is in no way a disgrace, but an inevitable fate, and most of all to the absurd notions that are entertained about the necessity for lavish expenditure at marriages and other social ceremonies. In the majority of cases in which I have "gone behind the bond," or the acknowledgment of balance due, I have found that the origin of the account was a loan to pay for the betrothal expenses of a son or a brother in the family. This is looked upon as a debt of honour which it is impossible to avoid incurring. The account once started, the debtor goes on taking supplies and petty cash loans, and letting the money-lender pay his land revenue for him until, with interest, a large sum becomes due, and in the end the debtor is obliged to give a mortgage bond on his land to secure the debt, and one or two separate money-bonds for fresh loans taken.

15. A shrewd money-lender has no objection to an account of this kind, for even if he should lose on the unsecured money-bonds, he is pretty sure of getting the land in the end, and in the meantime he gets a liberal share of the produce in lieu of interest.

16. This is the way in which land is ordinarily transferred from the agricultural to the money-lending class, and this mode of transfer Mr. Thorburn's proposals would leave untouched, as he would not exempt from attachment land and crops "specifically pledged" (para. 26).

17. I do not quite see how such exemption would tend to arrest the transfer of land from agriculturists to non-agriculturists. We must go much deeper than this to find the root of the evil. But as a further *step* in the *direction* of protecting the ignorant agriculturist from his too powerful antagonist, the money-lender, I think an exemption from attachment of as much *seed* grain

as may be necessary, and of a *subsistence allowance* of *food* grain, is justifiable and desirable, especially among the Muhammadan peasantry of the Western Frontier.

18. As to the next point, the extension of the period of limitation from three to six years, the above remarks about class legislation are equally applicable. I see no reason why the question of limitation for *agricultural* debts should not be considered by itself, and I see no necessity for the adoption of the same period for *all* classes of debt. If the latter principle were to be followed to its legitimate conclusion, we need have no limitation law at all, beyond the simple rule that *all* suits must be filed within six years. I am quite of opinion that the limitation law is absurdly minute, and that its 180 articles might with advantage be reduced to a dozen, but I do not expect lawyers to agree with me.

19. However, the question is, whether the extension of the period for agricultural debts, not being on registered bonds from three years to six, would benefit the agriculturist? Mr. Thorburn is of opinion that it would, chiefly because there is a better chance of his having one or two good harvests in six years than in three. If this be the chief argument in favour of the proposal, then it is one that holds good only in tracts where the harvest is very uncertain. It would have no great weight for instance in the Kangra district, where the crops seldom fail.

20. Mr. Thorburn remarks (para. 30), that "all agriculturists and *most capitalists*" are in favour of the longer term. But as regards capitalists, I do not see how this statement is to be reconciled with the fact that money-lenders do not care to *register* their bonds, though registration gives them the benefit of a six years' limitation instead of three.

21. I see that Colonel MacMahon, Officiating Financial Commissioner, is in favour of the extension on grounds urged by the Honorable Mr. Hope when introducing the Deccan Relief Bill, and on the very cogent ground that he found a "general consensus of native opinion, that the reduction of the period operated very prejudicially to the interests of the cultivator."

22. When an improvident man has borrowed money, it is natural that he should wish the period of repayment to be as distant as possible. But when the time for repayment comes at last, and he finds himself saddled with six years' interest at 18 or 24 per cent., a sum exceeding the principal, I am not sure that he does not heartily wish that he had been forced to settle accounts three years earlier. If, therefore, the period of limitation is to be extended, it should be with certain provisos.

23. In practice a great many unregistered bonds come under a longer limitation than three years, because the three years' period is only applicable to bonds in which no date is specified for payment. Where a date is specified, the three years period runs from that date. Many bonds are made payable one, two, or three years after date of execution. Thus the present rule operates unequally, and, whether the limitation is to be three years, or six, it is very desirable to attain to uniformity in practice.

This might be done by enacting some maximum period from date of execution beyond which the debt is not to be recoverable, whether payable on demand or by instalments or after a fixed date.

24. There is something to be said on both sides of this question. There is some advantage in having the account overhauled in court within three years, and a fresh start made in which the terms are publicly agreed to, and the debtor has no excuse for not understanding them. The *disadvantage* is that the debtor has been saddled with costs of court and that interest now begins to be charged on the *interest* of the original debt. This could be obviated by enacting that, "bond or no bond," interest is only allowable on the *original* debt, and no compound interest is to be allowed.

25. On the subject of interest, I entirely agree with the views expressed by Colonel MacMahon in para. 14 of his Secretary's letter No. 1189, to the effect that the courts should be released from all legal fetters in this matter, and be empowered to act on principles of "equity and good conscience."

26. Upon the whole, I think that, as regards debts other than agricultural, there is no necessity to extend the term from three to six years, and as regards agricultural debts it may be desirable to do so: *provided* the agricultural debtor be allowed at any time to *bring a suit* to *ascertain the amount due to the money-lender*. But I think that this remedy, and the exemption of a portion of food grain from attachment, will go but a very little way towards solving the large problem under consideration.

27. It appears to me that the general tendency of such measures as Mr. Thorburn proposes, unless other safeguards are adopted, is to *encourage* the peasantry to get into debt, in the hope that somehow the Government will take care that they are not ruined; whereas a more laudable object would be, not to help them *out of* debt, *but to prevent their getting into debt*. But this is an object by no means easy to accomplish.

28. I entirely endorse Colonel MacMahon's terse remark (in para. 12) that, "if the zamíndárs cannot manage their own affairs, no official could do it for them."

29. It is admitted that the Muhammadan agriculturists of the Deraját, and probably a great many agriculturists elsewhere also, do not manage their own affairs properly; seeing that not a quarter of them are free from debt, and the rest are gradually losing their land, their only possession, and falling in the social and political scale. But it is when we come to consider what, if anything, the State can do to mend matters, that opinions begin so widely to differ.

30. I am one of those who believe in the efficacy of legislation and of State action, and I hold that the State can do, and is bound to do, far more than has ever yet been attempted to promote the welfare of the community, and that this is specially the case in India where, though the prejudices and the ignorance to be overcome are great, the power to crush them out is greater.

31. There is a popular saying, that "men cannot be made moral by Act of Parliament," but, like many other popular sayings, it contains a fallacy, and if fully acted upon, it would prevent all remedial action on the part of the Legislature and the State. When the law brands certain acts as penal offences, the greater part of a community will abstain from those acts, and the abstention will gradually become a habit and a fashion, irrespective of the moral quality of the acts, or the estimation in which they were originally held. It is not merely the fear of punishment that deters from crime; it is partly also the opprobrium officially attached to the offences.

32. A Government in possession of moral ideas in advance of the people over whom it rules, may nevertheless embody many of those ideas in its action and its legislation, with a strong probability that in the end the lower morality of the community will be raised to the level of the governing ideal.

33. We often hear that sumptuary laws are impracticable and pernicious. Yet I see that in a recent *Gazette* the Government has fixed the scale of marriage expenses for certain Jat villages in Jullundur, with a view to checking female infanticide. Why not do something of the same kind to check *debt*, which is not only a social but is rapidly becoming a *political* evil?

34. I need not discuss in detail the various schemes in this direction that have been proposed or are being tried, such as the special agricultural courts in the Deccan, Land-mortgage Banks, &c. I would merely point out one way which I think has not as yet been sufficiently considered, and that is to ensure greater *publicity* in transactions between money-lenders and agriculturists, by the extension of *compulsory registration*.

35. I would have *every* transaction *recorded* in a *deed*, and *every deed registered*, and would provide every possible facility for registration. Village shop accounts for short periods and small sums would have to be allowed to be recoverable; but no account should be allowed to run beyond a certain period, say a year, and nor beyond the sum of say Rs. 50, without the balance being transferred to a bond and registered, and for this purpose the agency of "village" registrars is necessary.

36. I wrote a paper on the extension of compulsory registration on the French system (as advocated by the Honorable Mr. Cockerell) in 1879, when I was officiating as Inspector-General of Registration, and a Committee subsequently sat on the subject in Calcutta, when doubtless a great deal of information was collected, which may still be useful. Since then I have had more experience of the working of the Civil Courts, and I am more firmly convinced than ever, that the extension of compulsory registration would be a great check upon fraud and upon agricultural indebtedness.

37. I think also that some interference with extravagant marriage expenditure is another potent and practicable remedy, and that for the rest we must trust greatly to the gradual enlightenment of the agricultural classes by experience and education, and to the inculcation of the principle that debt is a thing to be feared and avoided, and is the forerunner of misery and ruin.

38. Lastly, the most hopeful remedy of all would be the adoption, for such parts of the Punjab as require it, of a measure analogous to the Deccan Relief Act.

39. I have just re-read the Act, and the discussions that took place in Council at the time of its enactment, and I am strongly impressed with the idea that such a measure is just what we want, and I observe that the Hon'ble Sir Robert Egerton, then Lieutenant-Governor of the Punjab, during the discussion said that :—

"The circumstances which had led to the Bill being introduced were of such general prevalence throughout India, that the mode in which they were to be treated in the Deccan might possibly form a precedent for their treatment in other parts of the country," and he knew that in the Punjab there were many agriculturists and land proprietors whose condition was very much the same as that described in the speech of the Hon'ble Member who introduced the Bill (Mr. Hope).

40. All that I have urged about village registration, limitation of interest, &c., would be secured by the adoption of a measure in the spirit of the Deccan Relief Act.

I therefore heartily concur with the concluding proposal made by Mr. Thorburn, that "the working of the 'Deccan Relief Act' be ascertained;" and I think the best way of doing this would be to send an experienced Settlement Officer from the Punjab to the Deccan for a few months, to study the working of the Act and to report on the subject.

No. 1624, dated 12th August 1885.

From—Denzil Ibbetson, Esquire, Officiating Director of Public Instruction, Punjab.
To—The Junior Secretary to Financial Commissioner, Punjab.

In compliance with the request conveyed in your letter No. 4362, dated 19th June 1885, I have the honour to forward a memorandum on the subject matter of the enclosures to that letter.

Memorandum on Mr. Thorburn's papers on agricultural indebtedness in the Deráját.

Mr. Fanshawe's letter indicates three points upon which opinions are especially desired ; (1) the exemption from attachment and sale of a portion of the produce of land ; (2) the lengthening of the period of limitation for debts ; (3) the summoning of agriculturists during harvest.

2. I am strongly in favour of the proposal to exempt from attachment and sale so much of the produce of land as is necessary to support those who are dependent upon such produce, and their families, till the next harvest ; and also, in the case of cultivators who possess an enduring interest in the land they cultivate, so much as is necessary for seed. I do not think the exception should be limited to the cultivator's share of the produce. A widow without grown up sons is wholly dependent for her livelihood upon that share of the produce of her land which is paid her by the actual cultivators.

3. It may be well that, as pointed out in Mr. Fanshawe's letter, "the exception should be of general application, and should apply to the abso-

lute necessaries of all classes, and not merely of agriculturists." But I would submit that the case of those who depend upon the produce of land is quite *sui generis,* and that the necessity for some such protection arises in their case from circumstances which are peculiar to such persons. The daily, weekly, or even monthly wage of the labourer or servant is practically secure from his creditor. The latter can seize upon accumulated savings, and he can even attach individual payments; but he cannot, in practice, continue to attach each payment as it comes in. The profits of the tradesman or the money-lender seldom accrue in a form which the creditor can identify for purposes of attachment. In neither case can the creditor lay his hand upon the whole means of current sustenance of his debtor. But those who depend upon land for their livelihood are paid, as it were, twice a year, at harvest time; they depend absolutely for existence during the next six months upon the proceeds of the harvest; and those proceeds, their amount and the time of their accrual being patent to all, the creditor has the debtor's bare subsistence absolutely at his mercy.

4. On the question of the extension of the period of limitation, the opinion of judicial officers will be of greater value than my own. I do not remember to have discussed the question much with the people. But so far as my opinion goes, it is in favour of extension.

5. I think the rules regarding the summoning of agriculturists during harvest certainly require enlargement. As I understand the Chief Court Circular, quoted by Mr. Fanshawe in his 9th para., it requires the attendance in court of the agriculturist defendant before the question can be raised. If so, the rule seems to me of very little value. The courts should be forbidden to summon agriculturists at all during harvest time, and the protection should be extended to all village menials whose earnings at harvest time form a very material addition to their income. To the best of my recollection, the ordinary autumn harvest is not so urgent as the spring harvest. But the rice harvest forms an exception, as rice, like wheat, must be cut within a few days of ripening. The most effectual steps would be to close the courts altogether during harvest time. If this is not done, the fear of bad averages will lead the subordinate courts to neglect the provisions of the law, or to interpret them too strictly; while a decree once passed *ex parte,* it will be difficult for the defendant to prove that he was exempt from attendance. But I am not sure whether it would be practicable to curtail so largely the judicial working year.

6. Mr. Thorburn's remarks upon the sale of cattle during seasons of drought have not received notice at the hands of the Financial Commissioner. I think that courts should be empowered, or still better, directed, to suspend the sale in execution of decree of any property, the present value of which, owing to temporary circumstances, stands at an abnormally low level.

7. There is one suggestion which I do not find in Mr. Thorburn's letter, but which would, I believe, if acted upon, do much to diminish the dissatisfaction with which the people do undoubtedly regard the procedure of our courts. It is that the Munsiffs should itinerate. I cannot conceive any good objection to the rule that a Munsiff should sit for, say, a month at a time, twice a year at each of six conveniently situated centres in his tahsíl, the tahsíl being divided into six corresponding tracts, and all suits from each tract being heard only at its own centre. Such a procedure would not only diminish the present inconvenience to the parties to suits; but it would also do away with the feeling which now not unfrequently actually prevents parties from summoning witnesses, whom they would be glad to call were it not for the serious inconvenience which a summons to head-quarters entails upon its recipient. Moreover, in the villages the Munsiff would be surrounded by a public more competent by knowledge and character to exercise a healthy influence upon the court, than is the scum which collects about the head-quarters' offices.

8. I would venture to say a few words upon the general question raised by Mr Thorburn; and I believe that the fact that His Honor the Lieutenant-Governor has already expressed his opinion in a sense contrary to that in which I shall write, will not cause my remarks to be looked upon as impertinent. It has always seemed to me, that the manner and degree in which we have encouraged and compelled the substitution of individual for communal rights in

land, constitutes the most grievous blunder that we have committed in India. It is true, that in parts of the Punjab we were supported in our action by the traditions of the Sikh rule. But the detestation in which the people held those traditions, and the tenacity with which they clung to the memory of what preceded them, suffice to show their evil nature. One of the most pernicious of the consequences that have followed upon our action is, to my mind, the ease with which ancestral interests in land are permanently alienated; and I most cordially agree with Sir Donald McLeod's opinion as quoted by Mr. Thorburn at page 21 of the printed correspondence under discussion. I do not think it is sufficient to answer that such alienations are the inevitable result of a healthy economical process, by which the thriftless is ousted in favour of the thrifty. From a purely economical point of view the answer is doubtless sufficient. But political considerations must outweigh almost all else in India. In a country like England, where the people govern themselves, popular discontent means little worse than a change of Ministers and an alteration of the law. In a country like India, popular discontent takes the form of disloyalty. If the evils complained of are "inherent in the character and traditional habits of the people," how is it that they date, at least in their present aggravated form, from the epoch of our rule? Nor do I believe that they are due to the gradual "extension of law and systematic government;" but rather to the gradual extension of a sort of law and a system of government unsuited in some respects to the people and their circumstances. I believe that the evils complained of are largely owing to an insular ignorance of all conceptions of rights in land other than those current in England, which is only now disappearing under the light of an inquiry first suggested by the facts of Indian landed tenures. And I believe that they are further owing to our obstinate conviction, that principles of equity are a sort of necessary truths, wholly independent of the circumstances under which they are to be enforced. Our landowners are thriftless, very much because we have placed them in new circumstances in which they have never had to exercise thrift. The thriftless who are displaced from the land which is to them the very mark and essence of their position in society, do not disappear, nor does the memory of what they were. They are the yeomanry of the country to whom, not long ago, the sword was as familiar as the sickle. The thrifty who displace them are alien by race and religion, always objects of contempt, and now objects of hatred which can hardly fail to extend in time to the courts to whose action alone they owe their present positions. Colonel MacMahon's remarks, in para. 12 of his Secretary's letter, appear to me to be beside the mark. No one proposes that Government officials should manage the people's affairs for them: no one desires drastic novelties. What I, and those who think with me, ask for is, that the people should be allowed to manage their affairs in the way in which they, and not we, understand them; and that we should undo the revolution which we have introduced.

9. It is often said that it is too late to go back. But if our first steps were retrograde, to retrace them will be to advance. We have "gone back" in this sense in Ireland; we have gone back in the Deccan. The proposal to prevent individuals from contracting themselves out of the statute was *anathema maranatha* to every right-minded lawyer. It is difficult to correct a mistake; but may be dangerous to leave it unremedied. I fully admit the enormous difficulties of the case; but I believe that they will have to be faced; and every year of delay makes it more difficult and more dangerous, either to act or to abstain from acting.

10. As for usury laws, it is certain that any provisions limiting the power of contract are so easily evaded as to be practically inoperative. But would a power to go behind the contract be so ineffectual? Has the experiment of a usury law, combined with such a power, ever been fairly tried? At present, if I rightly understand the matter, something very like a permissive usury law exists in the Punjab; the Chief Court having ruled, only in less bald language, that a contract for the payment of unreasonable interest may be presumed to have been obtained through fraud or ignorance, and, therefore, to be void. But for reasons given by Mr. Thorburn, such a permissive rule is of small avail.

11. One more point I would touch on. We are told that, because credit is indispensable to the agriculturist, therefore any action that will reduce the value

of the security which he can offer, will only raise the rate of interest and plunge him still deeper in the mire. I think that it is sometimes forgotten that, while it is true that the agriculturist must borrow, it is no less true that the capitalist must lend. In individual instances the latter is the master; but he is powerless against circumstances which permanently affect all borrowers alike. Anything that diminishes the security which an individual borrower can offer, must tend to raise the price he will have to pay for accommodation; though even this tendency is curiously weak in a country so conservative as India, where tradition is so strong, and where in many respects guild feeling almost overrides competition. But circumstances that diminish in an equal degree the value of the security which each member of the borrowing class can offer, are not, I think, necessarily followed by a rise in the rate of interest. The present rates of interest are high beyond all comparison with the value of the security offered. They are survivals from the time when that security was of far smaller value than at present. And they have survived simply, I believe, because the rise in the value of landed security, due to our advent, was absolutely general, and gave to no individual borrower an advantage over his fellow. It seems to me probable that an equally general decrease in the value of landed security would leave current rates of interest unaltered. At any rate, interest *must* be had, or the capitalist dies of inanition. And the amount of interest that *can* be had is strictly limited to the amount of which our courts will compel payment.

12. I would ask to be excused for having put my views as plainly and strongly as lay in my power. The importance of the subject cannot be exaggerated; I do not understand that the expression in Mr. Fanshawe's letter of His Honor's opinion on certain main points was intended to limit me to the discussion of details; and while it is with the greatest deference and diffidence that I venture to suggest arguments on the other side of the question, I have not thought it necessary to weaken their exposition by stopping in the middle of it to say so.

No. 938, dated the 6th August 1885.

From—ROBERT CLARKE, Esquire, Deputy Commissioner, Delhi,

To—The Junior. Secretary to Financial Commissioner, Punjab.

IN compliance with your No. 4362, dated 19th June, addressed to me at Hoshiárpur, I have the honour to submit a note giving my opinion on the questions raised by Mr. Thorburn, and the remedies suggested with special reference to paras. 5 and 6 of Mr. Fanshawe's letter, dated 22nd May, to your address.

Note on Mr. THORBURN's memorandum *re* agricultural indebtedness, by Robert Clarke, Esquire, *Officiating Deputy Commissioner, Delhi.*

Distress.

Mr. Fanshawe's letter has limited the scope of the enquiry to comparatively small dimensions, namely as to distress, para. 5, and limitation, para. 6.

As regards attachment, I consider the law of distress in this country to be excessively severe. Section 266 of the Civil Procedure Code does not go nearly far enough in its exemptions. I have seen a couple of brass cooking pots, a charpoy and a blanket attached, as the whole of the moveable property, leaving the debtor and his family without a bed to lie on, or a blanket to cover them in the coldest weather. I quite agree with the Lieutenant-Governor, that agriculturists are not the only debtors that require protection from the cruel severity of our execution laws.

I should leave it optional with the court in any case, where it considered that property could not be attached without extreme hardship, to refuse to inflict such hardship in the name of the law. I should not attempt to give an exclusive list of exempted articles; such a list must always be incomplete, and it would be quite sufficient to give examples of what the law thought would be hard cases. One of these would probably be the case of an agriculturist left without seed, corn or the means of feeding his family till the next harvest.

If a debtor, on being sold up, could come upon the rates as in England, the law would never have been so severe. Because he manages to exist through the charity of neighbours and friends very little better off than himself, I do not

think Government is justified in closing its eyes to the misery that it is the means of causing, and which amounts to a vast total even in this Province.

Limitation.

Little need be said about limitation, as that is a point upon which all officers in the Punjab are practically agreed. A six years' period would be welcomed by the creditor as well as by the debtor: by the creditor, because he would be much more seldom driven into court in self-defence, and by the debtor, especially the agriculturist, because he would have a better chance of clearing off or reducing his obligations by the certainty of two or three good harvests in six years. Even if he found himself in court, he would be more leniently treated in the matter of interest, if the total of the interest looked excessive in proportion to the principal, as it would if it had been accumulating for six years.

The courts would also be relieved.

Conclusion.

Although my opinion has not been asked on the point, I may be excused if I state my conviction, that Mr. Thorburn has understated rather than exaggerated the political danger that is caused in the Upper Punjab by the existing system. I have served in almost every district north of the Sutlej, so I do not speak without experience. I for one would cast political economy to the winds sooner than run the risk we are doing, if we go on as heretofore. Any Afrídí or Patháu from beyond the Border will point to the 'Díwání' as the one great blot in our system; he will put it even before the leniency to women shown by our criminal law; and that is saying a good deal for him.

No. 621, dated 2nd July 1885.

From—Captain J. A. L. Montgomery, Director of Settlements and Revenue Records, Punjab,
To—The Junior Secretary to Financial Commissioner, Punjab.

I have the honour to acknowledge receipt of your No. 4362, dated 19th June, forwarding a copy of certain printed correspondence, regarding a memorandum written by Mr. Thorburn on the indebtedness of agriculturists in the Dera Ismail Khan District I unders'and that my opinion is required on the two points referred to in paras. 5 and 6 of the letter No. 507, dated 22nd May, from the Junior Secretary to Government, to your address.

2. The first question deals with the proposal to exempt from attachment and sale a portion of the cultivator's share of the produce. It is enquired whether this exemption should not be of general application, and should apply to the absolute necessaries of all classes. So far as the cultivator is concerned, I can only say that I quite agree with what Lieutenant-Colonel Wace wrote on this subject as Settlement Officer of Jhelum. (See extracts appended to his No. 1009, dated 5th September 1879, written as Settlement Comissioner.) The Government revenue, or the rent, accordingly as the grower of the crop is the proprietor or the tenant, should most certainly be considered the first charge on the produce of the land. It is also quite as necessary that as much of the produce as is necessary for seed for the next sowing and for food for the family should be excluded from attachment. The Civil Procedure Code (Section 266) exempts from attachment tools of artisans and implements of husbandry, and also the wages of labourers and domestic servants.

Now, in the latter exemption the labourer and the domestic servants are at present placed in a more advantageous position than the cultivator. A great part of the produce of the land is nothing more than the wages of labour to the cultivator; and if he is deprived of all this, how is he to subsist till he obtains his next instalment of wages at the next harvest? It will be seen I am here only following Colonel Wace's argument. I am most strongly of opinion, that no judgment-creditor should be allowed to sell up the produce of any land until deductions had been made for—

(1) the Government revenue and cesses or the rent, as the case may be;

(2) a sufficient supply of seed for the land, and food for the family.

The calculation for food should not be made on too liberal a scale, for a debtor places himself in a position for which he must be considered mainly responsible, and he should not be favoured at the expense of his creditor. But he should at all events be held to have a right of bare subsistence from the produce of his field before paying his debt.

3. The other part of this question is, whether the absolute necessaries of other classes also should not be exempted from attachment in like manner. In my opinion, the exemptions allowed in Section 266 of the Civil Procedure Code are sufficient for other classes, and it is only the agricultural classes, which form the great bulk of the population, which need further protection.

4. The second question relates to the advisablity of altering the law of limitation. It has long been my opinion that the present short period of limitation for ordinary debts is responsible for a large part of the indebtedness of the agriculutural classes. No one who goes much among the people, and enquires from them the reasons for increased debt, but will be told that the principal cause is the short period of three years allowed as limitation for ordinary debts. The theory is that, if the period of limitation is short, the debtor is the sooner constrained to endeavour fo clear himself of his debts. But the practice is, that the shorter the period of limitaton the more often has the debtor, who may have been improvident, or who may really, from calamities of seasons or like causes, be unable to pay his debts, to give a fresh bond to his creditor in which the principal and interest are lumped together, and forthwith fresh interest begins to run on the total thus brought out. I am of opinion that the period of limitation for all bonded debts, whether registered or not, should be extended to six years.

No. 513, dated 1st August 1885.

From—J. A. Maconachie, Esquire, Deputy Commissioner, Gurgáon.

To—The Junior Secretary to Financial Commissioner, Punjab.

I have the honour to reply to your Circular letter No. 4362, dated 19th June 1885. As many other opinions will be forthcoming, I shall make the expression of mine as brief as seems consistent with clearness.

2. The matters specially referred are certain points in the procedure of Civil Courts dealing with agricultural debts. The recommendations made by Colonel MacMahon, in para. 14 of his letter to Government, I entirely and heartily agree with. We make no usury laws, because, as has been again and again noted, we really cannot enforce them. But when usury has done its worst privately, and comes into court to enforce what it is pleased to call its rights, the law may, and in my opinion, under the circumstances of the Punjab agriculturist, should step in and say, you shall "not *recover* here, under the ægis of the court, more interest than according to the equity of the case appears right." This would be effective, for the agricnlturist would soon learn its purport, and even his half-wit would use it, and there will be little question among officers who know the people, of its justice. The straining interpretation put by the Chief Court on the present provisions of the law, is of itself an urgent indication of the necessity of some such change.

3. The question whether a maximum amount of interest should not be fixed, is not so important as the foregoing; but, under the conditions of the country it might still have great practical importance. In some parts of the Province, the old custom is still remembered, that no debt should ever win for the creditor more than half as much again (deorha). In other parts there are vestiges of a practice not allowing more than double, and this latter rate would be the more prudent, as not calling the baníya into court so soon. One-hundred per cent. on a loan is surely sufficient to allow trade to flourish, however old the debt may be?

4. Both of these provisions are intimately connected with the question of limitation. The present law on the subject is a curious instance of theoretic legislation, defeating the very ends it has in view. The end was to prevent old debts trailing on till the memory of the debtor could not recall them. It

was also thought probable that quick settlement of debts would prevent the accumulation of interest. The practical effect of the law is exactly contrary to the intention of the legislators. The proportion of debt cases, where old loans are cooked up in accounts into new ones within the statutory period of limitation, is very large. The perjury consequent on this is enormous; it cannot be really known how enormous. The baníya comes into court with his made up claim. According to his lights that claim is sustainable, for the period of limitation is cruelly arbitrary according to baníya's morality. The zamíndár, on the other hand, shelters himself under the fact of limitation, but generally goes beyond this, to say he *never* owed any thing. Both parties lie, the court often knows it, and has to construct an order on the technical evidence, which shall in some measure satisfy its own conscience, and yet not fail under the criticism of the appellate court. All this is daily judicial experience, and contains evils which one day will bear fruit. So far as our law is unwise, we are responsible for it. If we must have any limitation at all, it should be twelve years, *i.e.*, practically so long as to take in all ordinary cases. The inconvenience of investigating old facts would be nothing like that of investigating made up accounts.

5. I believe there will be an almost unanimous consensus of opinion, that three years is too short a period for limitation of action for debt; but I cannot help taking this opportunity of noting that this conviction was held with great force and sagacity by a native gentleman, whose name will always bespeak respect; Raja Sir Sáhib Dyal of Kishenkot. It is more than twelve years ago since I heard him express himself on the point, but his words have remained with me ever since, and I have often recurred to them as an accurate explanation of facts. The mutual confidence of the parties, the comparative honesty of the baniya, the comparative truthfulness of the debtor, and the far smaller amount of litigation under the old system, were dwelt on by him with a partiality for old things, which, in this case, appears every day more and more justifiable.

6. The question of putting restraint on alienation of ancestral land in execution of decree is a more difficult one. There is so much to be said on both sides, that no strong opinion can be ventured either way with prudence. The safest procedure probably is a compromise, and it is a compromise which we work with at present. There is no legal restraint on the sale of land under decree of court, but practically the cases in which sales are made are, under "the policy of the Province," altogether inconsiderable. Before making any violent alteration in this somewhat illogical arrangement, we ought to have good data as to what the outcome of such alteration would be, and these may, under the Deccan Ryots' Act, be forthcoming before very long.

7. The proposal to secure a certain proportion of produce to the agricultural judgment-debtor is, I think sound, and I should be inclined to plead for more favour to the agriculturist than His Honor the Lieutenant-Governor, in para. 5 of his Secretary's letter, seems inclined to allow. The case appears to be one of those in which the speciality of land as a property may reasonably require special treatment. The work of the zamíndár requires a certain stock of food, &c., over and above what an artisan, earning his daily wages, would require.

8. I forbear entering upon a discussion of Mr. Thorburn's letter generally, as this does not seem called for. I would, however, briefly note on one point touched on by him, the employment of pleaders in petty cases. The prohibition suggested by him seems practicable and safe, that in cases tried by Munsiffs no pleaders' costs should be allowed. This prohibition would be somewhat "tentative" in its nature, for we should see, after a few years' experience, in how many cases the need of professional advice was considered so urgent by the parties, that they paid a pleader out of their own pockets without hope of return. And if it were found that the long head and the long purse still came together, part of the claim being given up as a speculation to secure the rest, then legislative interference might be asked for to prevent practice of vakíls in such cases. But the prohibition of *recovery* of *fees* might perhaps be made by the Chief Court in executive rules under Section 27, XVIII, 1879.

No. dated 6th August 1885.

From—A. ANDERSON, Esquire, Forest Settlement Officer, Kángra,
To—The Junior Secretary to Financial Commissioner, Punjab.

I HAVE the honour to reply to your No. 4362, dated 19th June 1885, in regard to the indebtedness of agriculturists, and, in doing so, confine myself for the most part to the points in paras. 5 and 6 of the Government letter on which an opinion is asked.

2. The general question has been discussed over and over again, and the process by which the land is being gradually but surely transferred from the true agricultural to the trading classes is patent to all. It is now too late to arrest the transfer, however deplorable it is, especially from the political point of view; the most that can be done is to make it, if possible, more gradual than it is.

3. Much of the distress and dissatisfaction caused by our system arises from the mechanical, unsympathetic manner in which our courts dispose of cases. The object kept before the Judicial Officers is the decision of a certain number of cases in as short a time as possible. The labour spent in bringing the parties to an arrangement that will suit both is not shown in the monthly statements. On the contrary, such a case would be shown as compromised, and should have been decided in a shorter time than the contested cases. All courts should be bound to go behind the bond or the last balance, and to ascertain the exact state of accounts between the parties. It is only after such an examination that a court can say whether there has been freedom of contract or not. When once the amount of the debt has been fairly ascertained, every facility should be given to the creditor to recover it. This would be more satisfactory to both parties than the present system, by which we give large decrees, but do not assist the holders in executing them.

4. It is not in the course of executing decrees that the land is passing into the hands of the money-lenders. Sale of land in execution of decree is now hedged about with so many restrictions and formalities, and is so rarely sanctioned, that practically it does not exist. This very fact increases the voluntary transfers; for the creditors, without resorting to our courts, have ample means of making the debtors agree to sales and mortgages; and restrictions on the attachment of crops must have the same effect. It seems to me, then, that the very means we are using to prevent the transfer of land only accelerate it. The creditor, knowing he will get nothing from our courts, turns to the land, and some day, when the debtor is pressed for an instalment of revenue, he refuses to advance any more except on a deed of sale or mortgage, which is duly registered and enforced as a free and voluntary contract.

5. In regard to releasing some part of the produce from attachment, there is, in my opinion, an appreciable difference between the case of the agriculturist and of others who earn their bread, not in *producing*, but in *transforming* or *distributing* the fruits of the earth. The former cannot get another crop for six months or more, and in the interval he must eat and live, while artizans are not dependent to the same extent on times and seasons. It seems to me then, that a law for the protection of agriculturists should not of necessity be extended to all classes.

6. In my opinion the cultivator should be secured in maintenance until the next harvest, but this would be only a part of the authority that should be given to the Collector. When a decree has been passed against a land-owner or cultivator, the parties might be asked there and then to come to some arrangement about payment, which need not necessarily be confined to fixing of instalments. The terms of a sale or mortgage are likely to be fairer, while the debtor is still under the protection of the court. If the parties cannot come to any reasonable arrangement, the court might certify the fact to the Collector, who would thereby become trustee and manager of the debtor's estate, with authority to sell the land or to make any arrangement he might think proper.

7. The extension of the period of limitation would no doubt give a *prudent* man a better opportunity of extricating himself from his debts, but that is postulating a quality which is rarely found, and the very absence of which is

the main cause of the present difficulty. In legislating in this direction, it should be clearly ascertained that we shall not thereby be strengthening the source of the evil, by putting off the day of reckoning.

No. 316, dated 30th June 1885.

From—J. M. Douie, Esquire, Settlement Officer, Karnál-Umballa,

To—The Officiating Junior Secretary to Financial Commissioner, Punjab.

I have the honour to acknowledge the receipt of your Circular letter No. 4362, dated 19th June 1885, enclosing a memorandum by Mr. S. S. Thorburn on the indebtedness of agriculturists in the Dera Ismail Khan District, and calling for an opinion on certain of the points raised.

2. I understand that my observations are to be pretty closely confined to the two subjects discussed in the 5th and 6th paragraphs of Mr. Fanshawe's letter. But a few remarks on the state of things existing in the tract of which I have charge may be useful, as showing the points of view from which I approach the subject. The country I am now settling is probably unique in respect of the wide varieties of soils and agricultural conditions which it embraces It is in the richest tahsíl in my charge, Jagádhri, that the agriculturists are most deeply involved in debt, and that most land has passed into the hands of the money-lenders. A very considerable portion of the Jagádhri zamíndárs are hopelessly involved, and an enormous amount of land has been transferred to the traders. This is not due to over-assessment, for the revenue demand is not markedly severe. But a large part of the population consists of thriftless Rájpúts and Gujars, and the temptations afforded by unlimited credit have been too much for them. The Márkanda tract, which is still richer than Jagádhri, is also mainly held by a Rájpút population, but the condition of things here is less hopeless, though mortgages are very common. In the country round Thanesar the people are also much involved, and here the depressed state of the population is due to the existence of a revenue system unsuited to the extremely precarious character of the cultivation. Things are better in the rest of the Pipli Tahsíl. The amount of mortgage in Indri is pretty large. The indebtedness of the people is greatest in the Khadir, and transfers are least in the poorest tract of all, the Nardak, money-lenders having no desire to accept as a security, land the produce of which is so terribly insecure. This same cause has prevented the occurrence of sale and mortgage to any great extent in the Kaithal tahsíl.

3. It appears then that mortgages are most common in the richest part of the district, and that they are due in the main to the sudden extension of credit among a thriftless population. Where indebtedness is due to the incompatibility between a fixed revenue demand and very uncertain harvests, fluctuating assessments are the best remedy Government can afford to the people. They will, I consider, have to be introduced into the Nardak country here, and into the villages bordering on the Sarsuti and the Ghaggar.

4. Of the two palliatives referred to in Mr. Fanshawe's 5th and 6th paragraphs, the second appears to me the more important. Our short period of limitation is suitable for commercial transactions, but it is quite unsuited to dealings between the Indian peasant and the village trader. Under the old native system an account ran on indefinitely. No son would have dreamed of repudiating his father's debts. The money-lender depended on the village for protection, and dared not make extortionate demands. Disputes were settled by a rough and ready system of arbitration. This state of things could not of course last under our Government, at least without considerable modification. But the rapidity with which it has been broken down has been unfortunate. And one of the great engines for the destruction of the mutual confidence between trader and zamíndár has been the Lmitation Act. The agriculturist has not been slow to take advantage of the law if it favoured him in any case. The zamíndárs sometimes say openly, that they are themselves to blame for their present relations with the money-lenders, as they themselves started the contest which has had such disastrous results, by repudiating just claims. But in a game of skill, the baniya was sure to win in the end. He soon learned to strike his

balances with regularity, and he also learned that, if he took a mortgage, he need not trouble his head about limitation. I think then that the existing short period of limitation has worked badly :—

(*a*) By inducing debtors to repudiate just debts;

(*b*) By forcing debtors and creditors into courts;

(*c*) By causing the money-lenders to attach more value to the possession of a material security for repayment in the shape of a mortgage over the land.

If the law is altered at all, I see no reason why the period of limitation should not be fixed at twelve years. That would do something to restore the former easier relations between the money-lender and his client. Six years would be better than three, but not very much better.

5. As regards the proposal referred to in the 5th paragraph of Mr. Fanshawe's letter, I do not think it would be unfair, or would lead to any bad results, to exempt from attachment all that portion of the produce of the zamíndár's land which represents the wages of labour. The current rates of rent by division of crop are perfectly well known in every village, and we can assume the same rates in regard to crops on which cash rents are paid. I would only allow that portion of the produce which represents rent to be attached. Where the village rate of division is owner one-third, tenant two-thirds, I would, in the case of a land owner cultivating his own land, only allow the attachment of the owner's one-third share. This is not particularly indulgent. The other two-thirds is assumed to be wages of labour, but if the rent is attached, the Government revenue will have to be paid out of the wages. The principle of the proposal is admitted in Section 266 (*j*) of the Civil Procedure Code, though I do not wish to argue that the cases of a labourer paid fixed money wages and of a zamíndár cultivating his own fields are exactly parallel. If a hard and fast rule is considered necessary, I would fix the share that may be attached at one-fourth of total produce.

No. 865, dated 13th August 1885.

From—John A. Grant, Esquire, Offg. Deputy Commissioner, Umballa,

To—The Junior Secretary to Financial Commissioner, Punjab.

I have the honour to acknowledge receipt of your Circular letter No. 4362, dated 19th June, calling for opinions on certain points raised in Mr. S. Thorburn's memorandum on the indebtedness of the Muhammadan agriculturists of the Deraját.

2. I am certainly of opinion that no case has been made out for special measures being taken in the Deraját, and in the Deraját only. It may be that the change that has taken place in the relative positions of the Karár and the Muhammadan peasant in the Deraját is more marked than in other parts of the Punjab, but I think enquiry would show that there are other parts of the Province where the peasantry are quite as much, if not more, indebted than in the Deraját. I should, therefore, like to see any measures which Government may see fit to take, made of general application throughout the province, and not confined to any particular portion of it.

The proposal to exempt a portion of the cultivator's share of the produce from attachment and sale would undoubtedly give relief in the right direction, but I much doubt whether it could be successfully carried out in practice. The actual amount of the produce, and of the cultivator's share would always be in dispute, and questions would be raised in execution of decree, which our already overworked Munsiffs would have little leisure to enquire into, and which would, as a rule, be decided on the reports of subordinates, or of Commissioners specially appointed to conduct the enquiry. I believe more might be done in this direction, if the courts would more frequently direct that a decree should be payable in instalments, and would refrain from attaching the fatal condition that the whole should be recoverable if one instalment should not be paid when due. This at least gives a cultivator, who wishes to make an honest effort to pay off his debt, an opportunity of doing so without his being unduly pressed

and driven to the extreme step of parting with his land. If he knows, too, before the matter comes into court, that there is a good chance of his debt being decreed in instalments, he will not be so ready to stave off a suit by mortgaging his land to the creditor who threatens to sue him.

Mr. Thorburn's proposals, however, include also the exemption of a portion of the agriculturist's land from attachment and sale. In one way this would be open to objection, as a measure of this kind would practically act as a contraction of the period of limitation, and would bring the parties sooner into court. The money-lender would inevitably sue when he found the debt was becoming greater than the value of that portion of his debtor's land which he could get possession of by attachment and sale.

I do not think that the relief afforded by the abolition of imprisonment for debt would be very extensively felt. Decree-holders very rarely avail themselves of this remedy in enforcing their decrees against agriculturists. They know that the imprisonment can only last for six months at the most, and that they have to support the debtor during that time.

The extension of the period of limitation is, in my opinion, the measure from which most benefit to the agricultural classes is to be expected. But even this is only a palliative measure, and would only benefit those who are capable of making an effort to extricate themselves from their difficulties. With the thriftless and extravagant it would only serve to postpone the evil day, and might even lead them to plunge still further into debt and make their ruin more certain in the end. If it was resolved to take steps to extend the period of limitation, I do not think any harm would be done by extending it in the case of all debts. I am not aware that the period has been found too short in the case of debts other than agricultural debts; but to make the extension a general one, would obviate the necessity of drawing perplexing distinctions and definitions, and thereby adding to the intricacy of the law.

PART II.

Foreclosure of Mortgage.

Circular Memo. No. 6891, dated 12th October 1886.

PROCEDURE.
—
Transfer of immoveable property.

Deputy Commissioners are requested to report whether resort to the form of transfer of immoveable property by conditional sale, known as *bái-bíl-wafá*, is on the increase, and if so for what reasons.

With the report, a return should be submitttd showing for the past five years the number of applications made in each year to foreclose mortgages of this description.

No. 1708, dated 25th March 1887.

From—Colonel WACE, Financial Commissioner,
To—The Commissioners Delhi, Jullundur, Lahore, Ráwalpindí, Pesháwar, Deraját.

I AM desired to forward for perusal and return the replies of the Deputy Commissioners of your division to Circular Memo. No. 6891, dated the 12th October 1886, and to request that you will favour the Financial Commissioner with your own opinion on the question asked.

No. 223, dated Delhi, the 2nd April 1887.

From—A. R. BULMAN, Esquire, Offg. Commissioner and Superintendent, Delhi Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

I HAVE the honour to reply to your Memo. No. 1708, dated 25th ultimo.

2. In the three southern districts of this division, Hissár, Rohtak and Gurgáon, and in Umballa, there has been a very marked increase in the number of notices to foreclose *bái-bíl-wafá* mortgages under Regulation XXXIV of of 1803. In Umballa particularly both the numbers of such notices and their rapid increase are most serious. In the other districts the numbers are small, and there has been no steady increase during the last five years.

3. As regards the reason for increase, the Deputy Commissioner, Hissár, points out one probable cause of a temporary nature for the larger number of applications for issue of notices in his district in the last year or so, *viz.*, the desire to complete the sale before settlement begins. As a more permanent cause, he assigns the simple desire to get the best possible security, and he seems to think that in practice the sale is frequently not enforced. The Deputy Commissioner of Rohtak offers no opinion. The Deputy Commissioner of Gurgáon states his very briefly, and, as I understand, attributes the increase to the same cause which is assigned by the Deputy Commissioner, Umballa, *viz.* deeper involvement of the agriculturists in debt.

4. The Deputy Commissioners of Umballa and Delhi have written more fully on the subject. The latter, concurring with Mr. Clifford, District Judge, who has written a careful memorandum, puts down the obstacles which the present order of procedure places in the way of sales of land in execution of decree, as the main cause for the resort to *bái-bíl-wafá* mortgages, and the remedy which these officers suggest is to place similar obstacles in the way of enforcement of contracts of conditional sale.

5. The opinion of the Deputy Commissioner of Umballa may be regarded as the most important of all, on the two-fold ground that that is the district in which the evil is most prevalent and progressive, and that the opinion has been written by Mr. Kensington, who, as Settlement Officer, has had opportunities of close study of the condition of the agriculturists of the district; but I should, however, observe of that part of the district which is the most hopelessly involved in debt of all. He regards the increase in this form of mortgage merely as one of the signs of the utter prostration of large classes of zamíndárs,

and of the power of the money-lenders to tighten the screw. He thinks that things have now come to such a pass, that the whole subject of agriculturists' debts, and not only this particular branch of it, will require legislative remedy, somewhat on the lines of the Deccan Ryots Act, within the next few years, and there is no doubt that in the four southern tahsíls of the Umballa district, and most of all in Jagádhri, a condition of things is imminent, which will peremptorily call for remedial measures of a drastic kind. The State, both as landlord of the soil, and as responsible for the efficient working of an administrative system in which the solidity of the village community and the independence and influence of the village headman are most important factors, cannot allow whole tahsíls to be parcelled out among usurers, frequently non-resident, and almost always aliens in race, while the old proprietors of the land are reduced to the lowest level of rack-rented tenants-at-will. And there are unmistakeable signs, amongst which the increased resort to these *bái-bil-wafá* bonds is only one, that the apprehension that we are getting dangerously near such a state of things in a large part of the Umballa District, is by no means altogether fanciful.

6. The enclosures of your letter under reply are herewith returned.

No. 1880, dated 13th December 1886.

From—A. Anderson, Esquire, Deputy Commissioner, Hissár District,
To—The Secretary to Financial Commissioner, Punjab.

I have the honour to submit the report called for in the Financial Circular Memo. No. 6891, of 1886, on the foreclosure of mortgages.

2. The figures for the past five years show that the number of applications for foreclosure has increased from 97 in 1881, to 173 in 1885, in the five tahsíls of the old Hissár district; and there is reason to believe that the increase is not accidental. In this district, the mortgagees are no doubt anxious to get the sale completed before the settlement. But in all probability money-lenders are insisting more than in former years on better security, and as the people are averse from sale, they enter into the deed *bái-bil-wafá*. In many cases the mortgagee takes nominal possession of the land, and hands it back to mortgagors to manage on payment of interest. The security is better than a mortgage with possession, and it is natural to suppose that money lenders will endeavour to get the best security, all the more that it is now somewhat difficult to realize debts in any way.

Statement showing the transfer of immoveable property in the Hissár District during the past five years.

1881.	1882.	1883.	1884.	1885.
97 Hissár only.	128 Hissár only.	139 Hissár only.	129 Hissár, 65 Sirsa.	213 173 old Hissár. 40 Sirsa tahsíl.

No. 954, dated 28th December 1886.

From—W. P. Purser, Esquire, Deputy Commissioner, Rohtak District,
To—The Secretary to Financial Commissioner, Punjab.

With reference to his Circular Memo. No. 6891, dated 12th October 1886, begs to send statement of applications to foreclose *bái-bíl-wafá* mortgages during the last five years. This return seems to show that such applications are on the increase. No special reason can be ascertained for this circumstance. The number of applications seems to have some connection with the prosperity or otherwise of the district.

Return showing for the past five years the number of applications made in each year to foreclose mortgages of immoveable property by conditional sale known as baí-bíl-wafá for the district of Rohtak.

Number.	Name of Officers.	No. of applicattions made in past five years.					Total.
		1881	1882	1883	1884	1885	
1	Rai Jugal Kishore, Subordinate Judge... ...	8	5	6	13	25	57
2	Sayad Amir Ali, Extra Assistant Commissioner ...	...	1	9	11	7	28
3	Rai Sri Rám, ditto ...	1	1	...	4	10	16
4	Sheikh Abdulwábid, Munsiff, Rohtak	...	...	6	22	...	28
5	Mir Mushtáq Ali, do. Jhajjar	...	...	...	...	...	...
6	Manohar Lál, Tahsíldar, Gohána	...	1	2	...	...	3
7	Durga Pershád, do. Rohtak	...	...	...	...	...	...
8	Debi Sahai, do. Jhajjar	...	...	...	...	...	...
9	Angan Lál, do. Sampla	...	...	...	...	...	...
	Total ...	9	8	23	50	42	132

No. 1002, dated 23rd December 1886.

From—J. R. Maconachie, Esquire, Deputy Commissioner, Gurgáon,
To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to Circular Memo. No. 6891, of 12th October, I have the honour to state that the number of notices for foreclosure of mortgage in Gurgáon, during the past five years, has been as follows :—

1881	62
1882	86
1883	104
1884	120
1885	102

This shows undoubtedly an increase in transactions of this class, but under the circumstances of the recent history of the district, it is only what might be expected. We have no data to show a permanent increase of such foreclosures.

No. 196, dated 7th February 1887.

From—Denzil Ibbetson, Esquire, Deputy Commissioner, Delhi,
To—The Senior Secretary to Financial Commissioner, Punjab.

I have the honour to reply to your Circular Memo. No. 6891, of the 12th October last, calling for a report as to whether the resort to the form of transfer of immoveable property by conditional sale is on the increase or not, and if so, for what reasons.

2. I enclose a memo. on the subject by Mr. Clifford, District Judge of Delhi. I certainly agree with him as to the objectionable nature of the form of transfer in question. The figures given by Mr. Clifford, which supply the information called for in the second paragraph of the letter under reply, do not enable me to form any satisfactory opinion as to whether conditional sales are becoming more frequent than formerly. But I think that, as a fact, they are at present chiefly resorted to by the people of cities, and are uncommon among villagers. But I agree with Mr. Clifford, that resort is had to this form of

transfer, in order to avoid the obstacles offered by law to the sale of land in execution of decree. And I am strongly in favour of his proposed amendation of the law regarding such transfers. The courts are allowed and encouraged to go behind the law in simple debt cases; and there is still stronger reason for their doing so in cases which involve transfer of land. I myself should be glad to see *all* permanent transfers of land by legal process made subject to the sanction of the Revenue authorities. When a man alienates his land directly by private transfer, he at least does so with a full knowledge of the inevitable results of his action. This is not the case in mortgage and conditional sale; and I see no reason why he should be protected against foreclosure in the former and not in the latter case.

Memo. as to transfers of immoveable property by conditional sale known as *bái-bíl-wafá*.
(Financial Commissioner's Circular Memo. No. 6891, dated 12th October 1886).

THE question of transfers of immoveable property by conditional sale has only just been referred to me, and, from enquiries made in the registry offices, I find such transfers were registered as under from 1881 to 1886:—

YEAR.	Relating to culturable land.	Relating to sakni land.	Relating to houses.	REMARKS.
1881	87	12	42	
1882	109	8	53	
1883	229	15	27	
1884	210	14	59	
1885	161	5	34	
1886	112	13	39	

In addition to these, there are numerous transfers by way of mortgage with possession, and all are traceable to the action of Government in not allowing sales in execution of decrees. The mortgage by way of conditional sale is most objectionable, because an ordinary agriculturist, who enters into it under necessity, without really fully understanding the nature of the agreement, and trusting at the same time to the courts showing him some consideration and relieving him from the penal clause by which the mortgage is converted into a conditional sale.

In a few instances I have known the mortgagee, by way of conditional sale, forego his rights, but in such cases the mortgagee has been a city money-lender, whose object is to get back his money, who has resorted to this form of mortgage because of the difficulty experienced in obtaining sanction to the sale of land in execution of decrees, even when the decree declares his lien and directs the sale of the mortgaged property. In the case of a village baniya, he will never be found to forego his legal rights. I have known such refuse with full knowledge that the mortgagor may, through a relative, again secure his ancestral land by a suit for pre-emption.

In the case of an agriculturist mortgagor, he generally disputes over the interest, and in consequence fails to pay the amount due within the year of grace allowed, and thus loses his land. If transfers by way of conditional sale are still to be permitted, I think the law should be amended, and the courts empowered, in suits for foreclosure, to fix the amount due, and allow a reasonable time for the payment of the same. And only in default of such payment should the decree provide for the mortgage being foreclosed.

Further, some provision should be made, authorizing the court in such cases to reduce the interest to within reasonable limits.

Applications for foreclosure under Regulation of 1806 were as under :—

Year.	Relating to culturable land.	Relating to houses and sakni land.	Remarks.
1881	19	8	
1882	29	6	
1883	34	14	
1884	31	10	
1885	57	3	
1886	33	13	

The principal mortgages by way of conditional sale are in the Delhi tahsíl, and this is due to the city people well knowing the difficulty in obtaining sanction to sales in execution of decrees on simple mortgages. I know one pleader in Delhi, who holds about 50 mortgages by way of conditional sale in the Delhi tahsíl, who admits that he takes this form of mortgage simply on account of the difficulties in execution.

No. 114, dated 12th February 1887.

From—J. R. Drummond, Esquire, Offg. Deputy Commissioner, Karnál,
To—The Secretary to Financial Commissioner, Punjab.

As desired in your Circular Memo. No. 6891, of the 12th October last, I have the honour to report that resort to the form of transfer of immoveable property by conditional sale, known as *bái-bíl-wafá*, is not on the increase in this district.

The return showing the number of applications made in each of the last five years to foreclose mortgages of this description, required by para. 2 of your circular under reply, is herewith attached :—

Statement showing the number of applications made to foreclose mortgages of immoveable property from 1882 *to* 1886.

	During the year.					Remarks.
	1882	1883	1884	1885	1886	
Number of applications made...	71	67	79	40	28	

No. 153, dated 5th February 1887.

From—A. Kensington, Esquire, Deputy Commissioner of Umballa,
To—The Senior Secretary to Financial Commissioner, Punjab.

I have the honour to reply to your Circular Memo. No. 6891, dated 12th October 1886, on the subject of transfer of immoveable property by conditional sale.

2. The following are the actual number of applications for foreclosure during the past six years in the Umballa District :—

1881	None.
1882	107
1883	186
1884	180
1885	247
1886	328

These figures certainly appear to establish the fact, that mortgages on conditional sale are very largely on the increase. I had not myself noticed the fact, and must admit that I am surprised at the rapid increase shown by the figures, which are, I believe, nevertheless correct. The form of transfer does not come prominently before the Revenue authorities, who are more concerned with registering transfers in whatever way effected, than in tracing the steps by which they are brought about, and the Settlement Superintendents of the district consulted by me, gave it as their unanimous opinion that conditional sales were little known and rarely resorted to. Now that the matter is brought to the test of actual figures, taken from the Civil Court registers, there appears to be no doubt that it has great and increasing importance, even in the Umballa district.

3. No explanation can be given for the increase in applications, otherwise than that the indebtedness of the district is advancing by leaps and bounds. Of the correctness of this general fact, I have no doubt whatever, and I have recently drawn pointed attention to it in my report on the agricultural statistics for 1886. I believe it may be accepted that mortgages on conditional sale are among the most ruinous forms of agricultural loans, and that their rapid increase is due to the growing helplessness of the people to struggle with their difficulties in obtaining money on any reasonable terms. With whole sections of agriculturists belonging to the less provident castes, the money-lenders have long refused to make any advance at all, otherwise than on actual hypothecation of the land, and year by year the terms grow harder as the baniyás feel their growing power. I believe myself that the crisis is being rapidly reached in this district, and that, within the next 10 to 15 years at least, the Government will be almost compelled to step in and enforce wholesale measures of relief similar to those adopted in the Deccan Ryots Act. As a preliminary measure, the abolition of conditional sales might afford some small relief, but in my own opinion the time is already past for partial remedies, and no scheme will be of real use which does not take into account the whole conditions of agricultural indebtedness.

4. As regards conditional sales themselves, I understand from the District Judge that the Civil Court procedure is carried beyond the initial stage of application for foreclosure in only a comparatively few cases. The fact, however, remains, that the issue of notice is found sufficient by the money-lender to enable him to obtain possession of the land, his objects being obtained by private adjustment out of court.

No. 1252, dated 7th December 1886.

From—Colonel C. Beadon, Deputy Commissioner, Simla District,
To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to your Circular Memo. No. 6891, dated 12th October last, I beg to state that during the past five years there has been only one case of *bái-bil-wafá* in this district.

The case occurred in the Simla *cum* Baraoli tahsíl, in which 38 bigáhs and 13 biswás of land (21 bigáhs and 11 biswás unculturable and 17 bigáhs and 2 biswás culturable) were mortgaged for Rs. 8-5-6, the amount of the Government Memo. No application has yet been made to foreclose the mortgage.

Under these circumstances, it cannot be said that applications of this nature are either on the increase or decrease. They are of very rare occurrence in the Simla district.

No. 1017, dated 30th March 1887.

From—Colonel G. Gordon Young, Commissioner and Superintendent, Jullundur Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to your Memo. No. 1708, dated 25th instant, the enclosures of which I have the honour of returning, it is apparent from the reports of the Deputy Commissioners that, except in the case of the Ferozepore district, there is no increase of late in the number of transfers of landed property by conditional sale.

2. In the case of Ferozepore, the Deputy Commissioner has suggested what appears to be a plausible reason for the late increase, though it is difficult to explain why this should operate in so marked a degree in the case of this one district, and not operate in other districts of the division; on this head I can offer no suggestion.

No. 1571, dated 7th December. 1886.

From—C. M. Rivaz, Esquire, Deputy Commissioner, Kángra District,

To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to your Circular Memo. No. 6891, of the 12th October last, I have the honour to state that the number of *baí-bíl-wafá* deeds registered in this district, in the various registry offices during the past five years, has been as follows:—

1882-83	96
1883-84	140
1884-85	165
1885-86	152
1886-87 (7 months)	76

There is no reliable means of ascertaining the additional number of transactions of this description year by year, which have not formed the subject of a registered deed, but it may be assumed that the annual variations are approximately in the same proportion. It may be concluded, therefore, that no material increase in this form of transfer of land has occurred in this district of late years.

2. The number of applications for foreclosure during the same period has been as follows:—

1882-83	34
1883-84	35
1884-85	32
1885-86	19
1886-87 (7 months)	24

No. 1026, dated 15th November 1886.

From—G. Knox, Esquire, Deputy Commissioner, Hoshiárpur,

To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to his Circular Memo. No. 6891, dated 12th ultimo, states that in this district the cases of transfer of immoveable property by conditional sale, known as *bái-bíl-wafá*, were in some years more than in others, and that no special reason can be assigned for the same.

2. Submits a return showing number of applications made to foreclose the *bái-bíl-wafá* mortgages.

Return showing the number of applications made to foreclose the transfer of immoveable property by conditional sale known as bái-bíl-wafá in the Hoshiárpur District, for the past five years 1881 *to* 1885.

District.	No. of applications made to foreclose the *bái-bíl-wafá* mortgages during				
	1881.	1882.	1883.	1884.	1885.
Hoshiárpur	28	53	26	49	45

No. 1546, dated 22nd December 1886.

From—Major H. Wood, Deputy Commissioner, Jullundur District,
To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to his Circular Memo. No. 6891, dated 12th October last, has the honour to inform him that resort to the form of transfer of immoveable property by conditional sale known as *bái-bíl-wafá* is not on the increase in this district. Enclosed is the statement, showing the number of applications made during the past five years to foreclose mortgages of this description.

Statement showing the number of applications made during the past five years to foreclose the mortgages of immoveable property by conditional sale known as bái-bíl-wafá.

1882.	1883.	1884.	1885.	1886.
40	37	41	42	23

No. 1875, dated 13th December 1886.

From—G. E. Wakefield, Esquire, Deputy Commissioner, Ludhiána District,
To—The Assistant Secretary to Financial Commissioner, Punjab.

Submits the required statement, and remarks that no serious increase is apparent.

Statement showing transfer of immoveable property in the Ludhiána district during the past five years.

Year.	No. of cases.	Remarks.
1881	19	There is very little variation; not enough to be remarkable. The last four years show an average of 31, which is 12 in excess of the first year 1881, when there were nearly 19 cases, but last year again there is a fall to 23.
1882	31	
1883	34	
1884	36	
1885	23	
Total ...	143	

No. 2439, dated 8th December 1886.

From—E. O'Brien, Esquire, Deputy Commissioner, Ferozepore,
To—The Senior Secretary to Financial Commissioner, Punjab.

With reference to your Circular No. 6891, dated 12th October last, calling upon Deputy Commissioners to report whether resort to the form of transfer of immoveable property by conditional sale, known as *bái-bíl-wafá*, is on the increase, and if so to state the reason:—

2. In reply, I have the honour to state that *bái-bíl-wafá* is on the increase in this district. This has been ascertained from comparison of the figures for the past five years as given below:—

1881	110
1882	136
1883	246
1884	303
1885	444
Six months of current year	185

I am not quite certain what the cause of the increase is, but I think that it is that money-lenders are becoming more aware of the facility which this means of procedure gives to get hold of a debtor's land as compared with attachment and sale under an ordinary decree.

3. I give below the number of applications made during the past five years to foreclose mortgages of this description.

1881	7
1882	8
1883	7
1884	12
1885	75

No. 209, dated 4th April 1887.

From—W. COLDSTREAM, Esquire, Officiating Commissioner and Superintendent, Lahore Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

IN returning the statements of sale of immoveable property, received with your No. 1708 of 25th ultimo, I have the honour to state that, on a review of the figures for the districts of this Division, the district of Gurdáspur is the only one showing a large and unaccounted for increase. As Deputy Commissioner, I enquired into the matter, and reported my opinion as to the cause.

But with regard to the uncertain indications afforded by the figures of other districts, I hesitate to give a decided opinion in the matter, and think it just possible that the increase shown in Gurdáspur may depend upon more accurate record, and therefore be nominal. A few more years' statistics appear necessary before definite conclusions can be drawn.

No. 827, dated 10th November 1886.

From—Major J. B. HUTCHINSON, Deputy Commissioner, Mooltan District,
To—The Officiating Senior Secretary to Financial Commissioner, Punjab.

IN reply to your Circular Memo. No. 6891, dated 12th October 1886, has the honour to report that the number of transfers of immoveable property in the form of *bái-bil-wafá* is very insignificant in this district, and consequently needs no remarks.

The number of applications, made in the past five years, to foreclose mortgages of this discription is as follows :—

Year.	*No. of applications.*
1881	11
1882	*Nil.*
1883	8
1884	7
1885	5

No. 904, dated 10th December 1886.

From—G. HUGHES, Esquire, Deputy Commissioner, Jhang,
To—The Senior Secretary to Financial Commissioner, Punjab.

IN reply to his Circular Memo. No. 6891, dated 12th October last, and subsequent reminder No. 1095, dated 9th instant, has the honour to intimate that it is rarely the case that any transfer of immoveable property by conditional sale, known as *bái-bil-wafá*, takes place in this district.

During the past five years not a single application was made for the foreclosure of mortgages of the above description.

No. 2058, dated 23rd November 1886.

From—T. TROWARD, Esquire, Deputy Commissioner, Montgomery District,
To—The Secretary to Financial Commissioner, Punjab.

IN reply to your Circular Memo. No. 6891, of 12th ultimo, I have the honour to report that resort to the form of transfer of immoveable property by conditional sale, known as *bái-bíl-wafá*, is on the increase, and is due to the prevailing drought in the district from the last two or three years.

A statement showing the number of applications received to foreclose mortgages for five years is herewith enclosed :—

Statement showing the number of applications made to foreclose mortgages known as bái-bíl-wafá.

DISTRICT.	1882.	1883.	1884.	1885.	1886.
Montgomery ...	5	9	3	4	14

No. 352, dated 31st January 1887.

From—W. O. CLARK, Esquire, Deputy Commissioner, Lahore District,
To—The Officiating Senior Secretary to Financial Commissioner, Punjab.

WITH reference to Financial Commissioner's Circular Memo. No. 6891, dated 12th October 1886, has the honour to forward a statement showing number of applications to foreclose mortgages instituted, and documents relating to the transfer of immoveable property by conditional sale, registered during the past five years, from which it appears that such documents and applications are not at present on the increase.

Statement showing the number of documents relating to the transfer of immoveable property by conditional sale (bái-bíl-wafá) *registered, and also number of applications instituted during the past five years in the district of Lahore.*

OFFICE.	1882.	1883.	1884.	1885.	1886.
Registrar	2	...	...	1	5
Sub-Registrar, Lahore	65	67	63	61	40
Joint Sub-Registrar	...	...	10	20	6
Sub-Registrar, Kasúr	4	1	6	1	3
Do. Chunián	19	20	19	37	32
Do, Sharakpur...	15	4	8	12	3
Total	105	92	106	132	89
Applications to foreclose mortgages	22	19	33	27	28

No. 2023, dated 4th December 1886.

From—Lieutenant-Colonel R. T. M. LANG, Deputy Commissioner of Amritsar.
To—The Officiating Senior Secretary to Financial Commissioner, Punjab.

WITH reference to your Circular Memo. No. 6891, dated 12th October 1886, calling for a report as to whether resort to the form of transfer of immove-

able property by conditional sale, known as *bái-bíl-wafá* is on the increase and if so, for what reasons, I have the honour to state that the Tahsíldárs of this district are unanimous in the opinion that transfers by *bái-bíl-wafá* are not on the increase in this district, and that the experience of their last year's mutation work proves this. They can suggest no reason for this.

2. I regret to state the figures furnished by the registers in this district are of no value for the purpose of comparison, owing to the registers of 1883 and 1884 of the Deputy Commissioner's court having been lost. In those years two registers were kept up, one in the court of the Deputy Commissioner, and the other in that of the Judicial Assistant, or of the District Judge, who had concurrent or successive jurisdiction. The registers of the courts of the Judical Assistant and District Judge only are forthcoming for those years, and the figures, therefore, are incomplete.

Statement showing, for the past five years, the number of applications made in each year to foreclose mortgages by conditional sales.

Year.	No. of applications for lands.	Amount of mortgage money for which the land is transferred by conditional sale.			No. of applications for other property.	Amount of money of conditional sale.			REMARKS.
1882	36	13,076	5	0	8	1,026	1	0	Some files are not forthcoming, hence the amount of mortgage money is not entered.
1883	6	653	15	0	1	15	0	0	In one case, the amount of mortgage money is not entered, as the file is before the Chief Court in appeal.
1884	6	3,805	4	3	2	515	0	0	
1885	48	10,665	2	0	9	2,598	1	0	Three files are not forthcoming, and the amount of mortgage money is not entered, while some files are pending in other courts.
1886 up to 1st Nov. 1886.	52	9,443	15	0	6	1,543	0	0	Two files are not forthcoming.

No. 987, dated 22nd December 1886.

From—W. COLDSTREAM, Esquire, Deputy Commissioner, Gurdáspur.

To—Assistant Secretary to Financial Commissioner, Punjab.

IN reply to your No. 1095 R., dated 19th instant, I have the honour to submit a return showing the number of applications for foreclosures of conditional sales (*bái-bíl-wafá*) which have been presented in this district within the last five years. It shows that the number has greatly increased in the last two years.

After making enquiries in the matter, I consider the real cause which is to be assigned for this increase is the growing intelligence of the country, in this case particularly of the moneyed classes and their legal advisers; who are gradually becoming acquainted with the strong grip of substantial security which this kind of mortgage affords, together with the chance of acquiring land, a much coveted end. I attribute the increase almost entirely to growing familiarity with the provisions of the law.

Statement showing, for the past five years, the number of applications for foreclosures on conditional sale made in each year.

Serial number.	Name of year.	Number of applications to			Remarks.
		Deputy Commissioner.	Sub-Judge.	Total.	
1	1882 ...	...	...	...	
2	1883 ...	...	...	...	
3	1884 ...	...	6	6	
4	1885 ...	26	8	34	
5	1886 ...	*19	...	†19	* Up to 31st August. † Adding half to make up the average number to up to end of year the number would be 28.
	Grand Total			59	

No. 188, dated 19th April 1886.

From—Colonel R. P. Nisbet, C.I.E., Commissioner and Superintendent, Ráwalpindi Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

With reference to your Memo. No. 1708, dated 25th ultimo, I beg to state that the reports submitted by the Deputy Commissioners of this Division, of which I append an abstract, do not show any remarkable increase in the number of the *bái-bil-wafá* (conditional sale) cases. The fact is that the leading money-lenders now better understand the protection which the present rules for sale of landed property afford to the agriculturists, and to avoid their effect they prefer a resort to this form, to transfer of mortgaged property.

2. If these conditional sales were brought under the operation of Sections 320—7 of the Civil Procedure Code, the unwary agriculturists would be much benefited, and I am not of opinion that credit would be materially affected.

3. The original enclosures of your letter are herewith returned.

Replies of Deputy Commissioners, Ráwalpindi Division, to Financial Commissioner's Circular Memo. No. 6891, dated 12th October 1886, relative to the transfer of immoveable property by conditional sale known as *bái-bil-wafá*.

Siálkot.

In this district the statistics show that the transfer of immoveable property does not appear to be on the increase or much resorted to. The Civil Courts only show 28 such cases as having occurred from 1881 to 1885. The number of applications made to foreclose mortgages of immoveable property during the above five years was :—

1881	24	In the court of the District Judge.
1882	29	
1883	22	
1884	34	
1885	25	
Total	134	

Jhelum.

Here the cases are said to be on the increase, owing to zamíndárs borrowing money from money-lenders on the security of their landed property, which they mortgage on condition that, if the loan is not repaid on appointed date, the property is considered as conclusively sold. The applications made to foreclose such mortgages during 1881 to 1885 were :—

1881	9
1882	42
1883	13
1884	13
1885	35
Total	112

Shahpur.

The number of applications for foreclosure of mortgages was :—

1881	... ...	7
1882	... ...	3
1883	... ...	7
1884	... ...	14
1885	... ...	9
	Total	40

Gujránwála.

The number of applications to foreclose mortgages during 1881 to 1886 was :—

1881	... ...	72
1882	... ...	150
1883	... ...	110
1884	... ...	127
1885	... ...	121
1886	... ...	136
	Total	716

The cause of increase is owing to bad harvests, the agriculturists have been unable to meet the terms on which they mortgaged their property.

Gujrát.

Such cases are very little resorted to here, there being only 23 from 1881 to 1885. The applications to foreclose mortgages were only 7, *viz.*, 4 in 1884 and 3 in 1885.

Ráwalpindi.

In 1882 there were 34 applications for foreclosure of deeds, in 1883, 29; 1884, 34; 1885, 65; and 1886, 70. The number of deeds registered during 1882 to 1886 is as follows :—

1882	... ...	149
1883	... ...	147
1884	... ...	119
1885	... ...	92
1886	... ...	89
	Total	596

The reason assigned for this steady decrease is chiefly owing to the harvests being better than in earlier years, when the agriculturists found it difficult to find cash. The Deputy Commissioner's opinion is that *bái-bíl-wafá* is not on the increase, but that applications to foreclose are because formerly the additional conditions included in the former were generally not put into force, but now the money-lenders understand the procedure to be adopted, while the landowners also realize the effect which the conditions carries with it, and do not enter into such agreements unless obliged to do so.

No. 340, dated 5th March 1887.

From—Major A. S. Roberts, Deputy Commissioner, Siálkot District,

To—The Junior Secretary to Financial Commissioner, Punjab.

In reply to his Circular Memo. No. 6891, dated 12th October last, has the honour to state that the transfer of immoveable property by conditional sale (*bái-bíl-wafá*) does not appear to be on the increase or much resorted to in this district, as the statistics of the several Civil Courts only show 28 such cases having occurred during the past five years, *viz.*, from 1881 to 1885.

2. A return showing the number of applications made to foreclose mortgages of the above description during the past five years is submitted herewith.

Return showing the number of applications made to foreclose mortgages of immoveable property during the past five years ending 1885.

Name of Court.	1881.	1882.	1883.	1884.	1885.	Total.
District Judge	24	29	22	34	25	134

No. 1216, dated 14th December 1886.

From—G. L. SMITH, Esquire, Deputy Commissioner, Gujrát District,
To—The Senior Secretary to Financial Commissioner, Punjab.

IN reply to his Circular Memo. No. 6891, dated 12th October 1886, has the honour to state that transfer of immoveable property by conditional sale is very little resorted to in this district, as will be shown by the following figures :—

1881	2
1882	2
1883	3
1884	6
1885	10

2. The required list of foreclosures is also given below :—

Statement showing the number of applications made in each year, 1881 to 1885, to foreclose mortgages.

DISTRICT.	Year.	Number of applications.	REMARKS.
GUJRAT	1881 ...	...	
	1882 ...	...	
	1883 ..	...	
	1884 ...	4	
	1885 ...	3	
	Total ...	7	

No. 50, dated 17th January 1887.

From—H. W. STEEL, Esquire, Deputy Commissioner, Gujránwála,
To—The Senior Secretary to Financial Commissioner, Punjab.

WITH reference to your Circular Memo. No. 6891, dated 12th October last, I have the honour to submit herewith a statement showing, for the last five years, the number of applications made in each year to foreclose mortgages of immoveable property known as *bái-bíl wafá*, and to state that resort to such transfers has been on the increase owing to the non-prosperous condition of agriculturists. I also beg to annex herewith a memo. showing the rain-fall during the last five years, and it will appear that the number of applications has varied with the total rain-fall in each year.

Return showing the number of applications made during the last five years to foreclose mortgages of immoveable property known as bái-bíl-wafá, *called for in Financial Commissioner's Circular Memo. No.* 6891 *of* 1886.

YEAR.	No. of applications.	Rain-fall at Sadr station.	Cause of increase.
1881	79	27·8	The disastrous condition of the agriculturists forced them to mortgage their immoveable property on terms which they could not fulfil, hence the increase of applications for *bái-bil-wafá*.
1882	150	23·4	
1883	110	26·3	
1884	127	21·7	
1885	121	19·6	
1886	136	24·4	

No. 1149, dated 16th November 1886.

From—J. Wilson, Esquire, Deputy Commissioner, Sháhpur District,
To—The Senior Secretary to the Financial Commissioner, Punjab.

In compliance with Circular Memo. No. 6891, dated 12th October 1886, I have the honour to report that the number of applications for foreclosure of mortgage of immoveable property, under Section 8 of Regulation XVII of 1886, during the past five years, has been as follows:—

Year.	*Number of applications.*
1881	7
1882	3
1883	7
1884	14
1885	9

It would thus appear that resort to this form of transfer is not of such frequent occurrence in this district as to call for remark.

No. 924, dated 19th November 1886.

From—Colonel C. McNeile, Deputy Commissioner, Jhelum District,
To—The Senior Secretary to Financial Commissioner, Punjab.

In accordance with Financial Commissioner's Circular Memo. No. 6891, dated 12th ultimo, has the honour to report that the transfer of immoveable property by conditional sale, known as *bái-bíl-wafá*, is comparatively on the increase, and this is apparently due to zamíndárs borrowing money from money-lenders on the security of their landed property which they mortgage on condition that, if the loan is not repaid on the appointed date, the property is to be considered as conclusively sold, and then, owing to their extravagant and careless habits, being unable to redeem the lands by payment of the loan with the heavy rate of interest agreed upon.

Submits a statement showing for the last five years the number of applications made in each year to foreclose the mortgage of the description above mentioned.

Statement showing the number of applications made in each year to foreclose mortgages.

Year.	Applications made.	Notice given to Motgagor.	Applications filed in default for non-attendance of parties.
1881	9	7	2
1882	42	36	6
1883	13	11	2
1884	13	12	1
1885	35	29	6

No. 499 G., dated 2nd March 1887.

From—J. W. Gardiner, Esquire, Deputy Commissioner, Ráwalpindi District,
To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to your Circular Memo. No. 6891, dated 12th October last, calling for a report as to whether resort to the form of transfer of immoveable property by conditional sale, known as *bái-bíl-wafá*, is on the increase, and, if so, for what reasons. I have the honour to report as follows.

2. Statistics show that in 1882 there were 34 applications for foreclosure of deeds of conditional sale of immoveable property in:—

1883	29
1884	34
1885	65
1886	70

Thus it appears that there has been a steady increase in these applications from 1884 to 1886.

3. But the number of deeds registered during the past five years in this district is as follows:—

In 1882	149
1883	147
1884	119
1885	92
1886	89

4. These figures show a steady decrease from 1883. The Sub-Registrars of this district were asked to report the cause of fluctuations noticed in their offices, and the reason given by one for a decrease is that, in 1885 and 1886, when the price of food grains was high, zamíndárs went in quest of employment to Quetta, and by the money earned there were saved the necessity of mortgaging their lands on conditional sale. Another states that in the earlier years of the period the harvests were worse than they have been of later years, and the agriculturists consequently found it more difficult to find cash.

5. My own opinion is that *bái-bíl-wafá* is not on the increase, while applications to foreclose are, because formerly the additional conditions included in *bái-bíl-wafá* were generally not put in force. Now, however, the money-lenders understand better the procedure to be adopted, while the owners of land also realize the tremendous effect which the condition carries with it, and do not enter into such agreements unless necessity obliges them to do so.

No. 101, dated 31st March 1887.

From—Colonel W. G. Waterfield, Commr. and Supdt., Pesháwar Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

With reference to his No. 1708, dated 25th instant, returns the communications of the Deputy Commissioners received therewith, with the remark that the Commissioner can add nothing to the opinions of the Deputy Commissioners. In Hazára there has been no such transfer during the last five years. In Kohát such transfers have only numbered 11 in five years, no tendency to increase. The Deputy Commissioner, Pesháwar, cannot give the number of such transfers, thinks they are on the increase, but there have been no foreclosures.

No. 2283, dated 1st December 1886.

From—F. D. Cunningham, Esquire, Deputy Commissioner, Hazára District,
To—The Secretary to Financial Commissioner, Punjab, Lahore.

In reply to Circular Memo. No. 6891, dated 12th October 1886, has the honour to intimate that no transfers or sales of *bái-bíl-wafá* property have occurred in this district during the past five years.

No. 536, dated 2nd March 1887.

From—A. Christie, Esquire, Deputy Commissioner, Pesháwar,
To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to your Circular Memo. No. 6891, dated 12th October 1886, I have the honour to state that there are no means of ascertaining from the registers maintained in this district the exact number of transfers of immoveable property by conditional sale, known as *bái-bíl-wafá*. It would, however, seem that transfers of all kinds, and especially those referred to, are generally on the increase.

2. No application has been made to foreclose mortgages of the above description during the past five years.

No. 953, dated 8th November 1886.

From—R. Udny, Esquire, Deputy Commissioner, Kohát District,
To—J. Wilson, Esquire, Offg. Junior Secretary to Financial Commissioner, Punjab.

In reply to the Financial Commissioner's Circular Memo. No. 6891, dated 12th October 1886 (received on 27th idem), I have the honour to submit a statement, as per margin,* showing the number of transfers of immoveable property by conditional sale registered in the Kohát Sub-Registrar's office, during each of the past five years (1881 to 1885), as also during the current year. From this, it will be

* *Year.*	*No. of transfers by conditional sale.*
1881	1
1882	1
1883	4
1884	3
1885	2
1886	2

seen that, although there is a slight fluctuation from year to year, there is no apparent tendency for such transactions to increase.

2. No application was made to foreclose mortgages of this description during any of the past five years.

No. 375, dated 11th April 1887.

From—Colonel E. L. OMMANNEY, Commissioner and Superintendent, Deräjat Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

Commissioner to Deputy Commissioner, Bannu, No. 105 of 1st April 1887.
Deputy Commissioner to Commissioner, No. 150 of 5th April 1887.

IN compliance with your Memo. No. 1708, of the 25th ultimo, I have the honour, in returning the enclosures received therewith, to forward copies of correspondence marginally noted, and to state that there does not appear to be any noteworthy increase in the transfer of immoveable property by conditional sale.

2. In Bannu there is a slight increase in cases of land of four in 1885 and five in 1886, the remaining cases relate to house property. These increases do not appear to call for special remark, as the condition of the agricultural community generally is better than in the other three districts.

Copy of No. 105, dated 1st April 1887, from Colonel E. L. OMMANNEY, Commissioner and Superintendent, Deraját Division, to Lieutenant-Colonel E. R. Conolly, Deputy Commissioner, Bannu.

WITH reference to his No. 1218, of 26th November 1886, to the Senior Secretary to Financial Commissioner, forwarding a return showing the number of applications made for foreclosure of mortgages on conditional sale, in which, for 1885, 11 such applications are noted, and for 1886 it is stated that 13 such have been preferred, has the honour to request his intimating in what part of the district for these two years these applications have been made, and to what class these transferees belong.

Copy of No. 150, dated 5th April 1887, from Lieutenant-Colonel E. R. CONOLLY, Deputy Commissioner Bannu, to Colonel E. L. Ommanney, Commissioner and Superintendent, Deraját Division.

HAS the honor to reply as follows to his No. 105 of 1st April 1887:—

The 11 applications preferred for foreclosure of mortgages during 1885 were:—

Five in Bannu tahsíl, and relate to house property.

Three in Marwát, and relate to land.

One in Isákhel, and was on account of house property.

Two in Miánwáli, one of which was on account of house and the second on account of land.

The 13 such applications made in 1886 were as below:—

Three in Bannu tahsíl, *viz.*, two on account of land and one on account of house.

One in Miánwáli tahsíl on account of house.

Two in Isakhel tahsíl on account of house.

Seven in Miánwáli tahsíl, *i.e.*, four on account of house and three on account of land.

No. 1218, dated 26th November 1886.

From—Lieutenant-Colonel E. R. CONOLLY, Deputy Commsisoner, Bannu,
To—The Senior Secretary to Financial Commissioner, Punjab.

HAS the honour to reply as follows to his Circular Memo. No. 6891, dated 12th October last.

The annexed return containing the number of applications made in each year for the past five years shows that the transfer of immoveable property by conditional sale known as *bái-bíl-wafá*, is on the increase every year. The cause is apparent, that the people are getting into debt owing to bad crops through want of seasonable and sufficient rain. In the current year, 1886 thirteen applications have been already made.

Another cause for the increase in this particular kind of transfer is probably due to the circumstance that the country people, and especially the petition writers, are getting better acquainted with this procedure than they were in former times.

Kind of Transfer.	1881.	1882.	1883.	1884.	1885.
Transfer of immoveable property by conditional sale, *bái-bil-wafá*.	1	1	3	2	11

No. 1395, dated 29th December 1886.

From—G. M. Ogilvie, Esquire, Deputy Commissioner, Dera Ismail Khan District,
To—The Assistant Secretary to Financial Commissioner, Punjab.

In continuation of this Office No. 1344 of 16th instant, has the honour to submit copy of No. 660, dated 16th December 1886, to the address of Commissioner and Superintendent Deraját Division.

Copy of letter No. 660, dated 16th December 1886, from the Deputy Commissioner, Dera Ismail Khan, to the Commissioner and Superintendent, Deraját Division.

With reference to Financial Commissioner's Circular Memo. No. 6891, dated 12th October last, I have the honour to submit the following statement of applications for foreclosure of mortgage in the district during the past five years:—

1881	7
1882	4
1883	8
1884	9
1885	9
Average	8

The form of transfer by conditional sale does not, therefore, appear to be on the increase.

No. 356, dated 15th February 1887.

From—M. L. Dames, Esquire, Deputy Commissioner, Dera Gházi Khan District,
To—The Assistant Secretary to Financial Commissioner, Punjab.

With reference to Financial Commissioner's Circular Memo. No. 6891, dated 12th October last, and subsequent reminder Memo. No. 1095 R., dated 9th December last, has the honour to state that in this district resort to the form of transfer of immoveable property by conditional sale, known as *bái-bil-wafá*, is not on the increase. Seven applications to foreclose such mortgages were made during the past five years as per following detail :—

1882	*Nil.*
1883	1
1884	2
1885	2
1886	2

No. 1425, dated 3rd December 1886.

From—J. C. Brown, Esquire, Deputy Commissioner, Muzaffargarh District,
To—The Senior Secretary to Financial Commissioner, Punjab.

In reply to Circular Memo. No. 6891, dated 12th October, I have the honour to report that transfers of real property by *bái-bíl-wafá* are not on the increase in this district as shown by accompanying statement.

2. The number of applications to foreclose has been one.

Statement showing the documents presented for registration.

Year.			District Registrar.	Sub-Registrar, Sadr.	Joint-Registrar, Sadr.	Sub-Registrar, Alipur.	Sub-Registrar, Sanáwan.	Total.
1881-82	...	...	...	1	...	...	2	3
1882-83	...	...	...	5	...	1	...	6
1883-84	...	...	...	2	...	...	3	5
1884-85	...	...	...	2	6	1	2	11
1885-86	...	...	...	1	1	1	3	6

Statement showing the number of applications made for foreclosure of mortgages.

Year.			Number of applications.	Remarks.
1881-82	...	...	...	
1882 83	..	...	...	
1883-84	..	...	1	
1884-85	...	...	...	
1885-86	...	...	..	

Note by R. G. Thomson, Esquire, Senior Secretary to Financial Commissioner, Punjab, dated the 21st of October 1885.

The replies of the officers consulted have been received, and are tied up separately below. Some of them are very discursive. But on a separate sheet below, I have tabulated the results of the replies to the three main questions. You will see that there are practically no replies as to imprisonment for debt, a matter, indeed, which was not referred for opinion. As to the other two questions, there is a great majority in favour of an exemption from attachment, and sale of a portion of the produce; and a majority almost as great in favour of extending the period of limitation for suits for simple debt. As to my own view, please see a few remarks of mine further back in these notes. I am in favour, though doubtfully, of an exemption from attachment and sale of part of the produce. But I confess I see practical difficulties in the way of carrying it out; and I am not absolutely clear as to what the result will be. Mr. Rivaz has seen a plan of the kind at work in Kapúrthala, where it was introduced by Mr. Mackworth Young. He is in favour of the plan himself, but he adds that he thinks it led to an increase in mortgages. This is, I consider, very probable. I also imagine that such a restriction will very likely raise the rate of interest. Anything that makes the recovery of a debt more difficult or uncertain generally has this effect. I would be inclined to take these risks, however, but there are other practical difficulties. Some officers say that the amount exempted from attachment should be left to the discretion of the court, others that it should depend on the number of mouths in the debtor's family, others that it should be the ordinary tenant share of a *battai* rental, others that it should be a fixed quantity of so many maunds. It is sufficiently clear that, whatever course be adopted, the work of the courts executing decrees will be largely increased.

and some additional opportunities given for jobbing and perjury. On the whole, if the plan is to be introduced, I think we must trust to the discretion of the court. It is impossible to lay down any rule applicable to all circumstances. The only useful rule is the general one, that the amount of produce exempt should be sufficient to pay land revenue due on the harvest, and to provide absolutely necessary food for the owner and his family till next harvest. But it is easy to see that many questions might arise as to the last provision.

In connexion with this subject, Mr. Purser suggests that all cattle (if not other property also) should be put up to auction at an upset price, so as to avoid mock sales ruinous to the debtor. There is, I think, something to be said for this. Mr. Fryer and other officers have also suggested that courts, when passing decrees, should fix the dates of payment by instalments. If they omit to do this, the officer executing the decree to have power to do so in execution. I think this might be recommended. Finally a suggestion of my own is, that courts should have power to accept payment from judgment-debtors in any kind of ordinary produce. When I was trying civil suits and executing decrees, a debtor would often offer to make over to his creditor a bullock, or a buffalo or a heap of grain. Sometimes I could persuade the creditor to take this, but often he held out for hard cash. What we want is power for the court, when the debtor offers property of any common description, to assign it right away to the creditor at a valuation. Corn, cattle, jewellery and the like are always marketable in India, and the creditor, therefore, would suffer no loss. The debtor would, in most cases, produce what he offered before the court, and it would be valued and made over to the creditor then and there.

There is a general consensus of opinion that agriculturists should not be summoned at harvest time.

Next, as to extension of limitation, I agree with the opinion stated by Messrs. Anderson and Grant, and hinted by several other officers, that such an extension might benefit the thrifty, but would only render the entanglement of others more hopeless than ever. I do not wonder that the proposed change is strongly supported by native opinion. The opinions obtained are mostly those of debtors, or of men who are in sympathy with debtors. All debtors, who find difficulty in paying, welcome any change that will or may postpone the date of payment. But whether such a change is to their ultimate advantage, is a very difficult question. In the present case I think not.

Mr. Maconachie and Mr. Ibbetson wish in some way or other to regulate interest, and Mr. Ibbetson wants to modify individual ownership. I distrust all plans of this sort. Some form of communal ownership might have been tried fifty years ago, but it is absolutely hopeless now. As to regulating the amount of interest, that is not only a hopeless attempt, but cruel to debtors. Colonel MacMahon's proposal in this regard is the least objectionable that can be made. It might give temporary relief; but if creditors found it operated against them, they would demand material security beforehand, or, as suggested by Mr. Francis, insist on a collusive judgment to begin with.

I had not seen Colonel Wace's opinion on the Law of Civil Procedure before I saw it in this file. His economical arguments seem to me sometimes erroneous; but nearly all his administrative proposals seem to me excellent. I had thought out for myself a very similar plan; but I am afraid there is not much chance of its adoption.

Names of Officers.	Exemption from attachment of a share of produce.	Extension of period of limitation.	Exemption from imprisonment for debt.
A. Anderson	For	Doubtful	No opinion.
R. Clarke	For	For	"
Douie	For	For	"
Fryer	"	"	"
Grant	Doubtful	For	"
Hutchinson	For	Against	"
Ibbetson	For	For	"
Maconachie	"	"	"
Miller	"	Doubtful	"
Montgomery	For	For	"
Nisbet	"	"	"
Purser	"	"	"
Rivaz	"	"	"
Roe	Against	Against	Against.
T. W. Smyth	No opinion	No opinion	No opinion.
Stogdon...	For	Against	"
Tucker	For	For	Against.
Young (Gordon)	For	For	No opinion.

Note by Lieutenant-Colonel Wace, Second Financial Commissioner.

Mr. Thorburn's note, dated 1884, on agricultural indebtedness.
Government's No. 507, dated 22nd May 1885, replies to the same.

It is extremely difficult for any one who is occupied with pressing duties of current administration to record a satisfactory opinion on a correspondence such as this, which traverses almost the entire field of our revenue and judicial sytem. But I will endeavour to indicate briefly; (1) what I think we cannot usefully attempt; (2) what we have already done in the directions suggested; (3) what remains to be done.

2. We cannot succeed in protecting people against themselves; nor ought we to hamper those who are thrifty by restrictions intended for the protection of those who are not. Credit and the power to borrow on free terms, and free liberty to transfer land, do not bring misfortune, except to the weak, the reckless, and the fraudulent. These powers are essential to the success of labour, trade, and agriculture. And though under certain adverse conditions of national life it may be necessary to place these powers under restrictions, their restriction is a misfortune to be avoided by every means in our power. I am sure that those of us who have lived much among the people will bear me out, when I say that nothing is more striking than the juxtaposition and intermixture, especially in agricultural tracts, of villages and races which thrive, and of others which do not. And my own observations have led me to the conclusion that these differences have been created by soil and physical surroundings, much more than by religion, changes of government, or law. No doubt, religion, race and history are the foundations of social prosperity; and we have certainly been too confident of the power of our administration to modify the effects of these first causes. But even after making all allowances of this nature, it is probable that soil and climate are equally powerful factors in determining social conditions.

Travelling from the Jamna to the Indus, across the whole breadth of the Punjab Province, I have observed the same, almost unvariable, rule; the races who live on damp soils and on the alluvial lands, adjacent to our rivers, are unthrifty, physically and morally; those who live on dry light soils are the contrary. And a wide experience of this nature leads me to view with distrust any argument which attributes agricultural troubles mainly to forms of government, and which suggests that such troubles can be overcome by changes of law; and especially by changes such as would impose disabilities of free sale and contract on an agricultural population, who, as a body, are full of enterprise and resource. I believe that the content, thrift and stability of each race and group of agriculturists is, as a whole, very much the same under the British Government as it was under the Sikh Government; and that, if under our system, the thriftless are crushed, this result comes more slowly now than it did under Sikh rule.

3. But, while holding these views, I do not desire to underrate the great importance of adapting our revenue and civil administration to the requirements of the Province. And during recent years something has been done, and more is at the present time in progress to this end. I allude chiefly to the fluctuating assessments of land revenue, which have been introduced in considerable tracts of the South-Western Punjab, where the results of agriculture are uncertain; to the restrictions on attachments of moveable property introduced into Section 266 of the Civil Procedure Code, 1882; to the proposals now before the Legislature for placing restrictions on imprisonment for debt; and to the clauses inserted in the Punjab Land Revenue Bill with the object of giving to claims for rent or revenue the precedence of other debts. If due consideration is given to what has thus been done, and is now in progress, I do not think we are justified in speaking or writing, as if the Government had been inert.

4. I fully admit that a good deal still remains to be done. Our fixed assessments in Montgomery, Jhang and Mooltan, so far as they have still been maintained in these districts in preference to fluctuating assessments, are very unsuitable to the conditions of the local agriculture. And when a few weeks ago I submitted to Government the final report on the recent Mooltan Settlement, I explained in great detail the way in which the existing system operates to crush the weaker members of the agricultural community. In all these three districts the system of fixed village assessments was introduced after annexation, in the face of the strongly expressed opinions of the local officers. And the subsequent history of these districts has fully confirmed the apprehensions thus expressed.

5. In respect of the constitution of our Civil Courts, and the procedure of these courts, I have little to add to the opinions expressed by me, as Settlement Commissioner, in the correspondence noted in the margin, in reply to the Punjab Government's No. 1216, dated 2nd April 1879, (Home Department). The Punjab is essentially an agricultural province; and the great mass of the civil litigation concerns the agricultural classes. And though our existing Civil Procedure, and the Courts which dispose of this litigation, present a system, framed and elaborated with much regard to abstract principles of law, I think we must admit that equal regard has not been paid to the expediency of keeping these courts and their procedure in accord with the requirements of a population almost wholly agricultural. Is it expedient to set men to judge the causes of agriculturists, whose only qualification is school education, and who have no experience of or sympathy with the conditions of agricultural life. We have, however, done this, and are still doing this in an increasing degree. Again, is it expedient that the officers who preside in the courts, where the great mass of the litigation affecting agriculturists is disposed of, should have no official relations with the village headmen and other leaders of the agricultural society? Much that will not bear examination has been said about dispensing justice under the village tree. But the shortcomings of a system, under which our munsiffs are usually strangers to the people, and all the better influences of the agricultural society are shut out from their courts, and the place of these indispensable influences for good is often taken by legal-practitioners and petition-writers far removed

No. 1009, dated 5th September 1879, to Secretary to Government, Punjab, with appended extract of an earlier letter by me, dated 19th February 1877.

from the best influences of the English Bar,—these shortcomings are very serious, and call for Government's attention. During the past thirty years the pendulum has swung from a rough-hewn simple judicial system, organised by officers of ripe experience in the North-Western Provinces, which gave great satisfaction to the agricultural classes, to a system of a more elaborate and highly organised character, which is opposed to the preferences of the agriculturists, and which operates mechanically and takes little account of their special circumstances.

6. I believe that during my service in the Punjab I have always been among those most anxious to raise the standard of education in the administrative and judicial services. And I therefore feel the freer to say, that the extent to which in recent years we have entrusted judicial authority to young and untried men, however carefully selected, mainly on the ground of educational merit, has roused the anxiety of the best and most worthy members of the agricultural population; and is felt by them to be in strong contrast to their own preference for native officials of more established character and experience. The first and most reasonable demand of every litigant, is some security that his case shall be heard by a judge of established character, of some moderate official experience, and to whom the conditions and circumstances of his life are not strange. Our system tends increasingly to the neglect of securities of this nature. And, in proportion as they are neglected, the system will be exposed periodically to such attacks as this one by Mr. Thorburn; an attack which embraces many points, but which is prompted mainly by a conviction arrived at in personal contact with the agricultural classes, that we do not take sufficient account of their needs.

7. Similarly as regards the law administered and the procedure, we have been more anxious to work up to advanced standards of law, than to keep our system in accord with the practical requirements of the litigants who resort to the courts.

There are three main points, on which our system undesirably gives great dissatisfaction; the limitation law, the enforcement of usurious contracts, and execution procedure.

8. As regards the limitation law for debt of all kinds, I cannot recollect in my long service in the Punjab ever hearing an agriculturist express his approval of it. Nor have I ever heard one of our own officers assert that the agriculturists generally approve of it. When a law is thus opposed to the universal convictions of the classes chiefly interested, it seems to me to be incumbent on us to make at least some moderate concession in the direction of their strongly held preferences. I do not recommend any large change, or any change at all, except after due consideration; but to maintain that no change at all is required, is to ignore the universally expressed opinion of the classes chiefly interested.

9. As regards the enforcement of usurious contracts, I do not think that the bare statement of the admitted inutility of usury laws is much to the point. Our Munsiffs and Extra Assistant Commissioners need more authoritative guidance in dealing with usurious contracts than has yet been furnished to them. It is not an easy thing for even an English Judge of mature experience to say when a contract for heavy interest should be enforced, and when it should be set aside; and the more common such contracts are, the greater the difficulty of deciding the point. When we refuse to discuss proposals which are intended to provide rules on the subject, condemning such proposals as tantamount to usury laws, we in effect refuse to give to the courts of first instance assistance, which they appear to me to require.

10. To encourge our judges to invalidate contracts is no doubt a dangerous thing. But I am myself unable to see what valid objections exist to our limiting by legislative directions the exercise of the severer processes of the Civil Procedure, when a plaintiff seeks to use them for the recovery of heavy interest charges, for instance.—

(*i*) From the date of institution of suit no interest should run on any claim at a higher rate than 12 per cent.

(*ii*) Every decree for debt should state how much of the amount decreed is principal and how much interest.

(*iii*) No debtor should be imprisoned, nor ancestral immoveable property be sold, in order to enforce or to satisfy a claim for interest.

(*iv*) When the harvest of an agriculturist is attached, some moderate exception should be allowed, such as will enable him to support himself and his family until the next harvest is reaped.

(*v*) And perhaps some greater restrictions should be placed on the time during which decree for debt can be kept alive by repeated applications for execution.

I do not recommend these suggestions, as sufficient and certain remedies for the anxieties expressed in this correspondence. I merely put them forward as indications of what it is practicable and reasonable to attempt in a country where exorbitant rates of interest are commonly agreed to, and where the presiding officers of courts find it increasingly difficult to decide how far such contracts can properly be enforced.

If a plaintiff seeks the aid of authority for the recovery of a debt, he may reasonably in return for this assistance be required to accept *thereafter* a moderate rate of interest. And in enforcing severe processes for the recovery of debt, we may reasonably draw a distinction between the moral obligation to repay the principal, and the obligation to pay high rates of interest, which, though customary, are ruinous when extended over long periods. And more circumspection should be used in so stripping an agriculturist of all his means of support, as to render him incapable of continuing the husbandry of his holding.

11. I think it would be better to frame a few rules of this nature, intended to place restrictions on the resort to the severer processes of Civil Procedure, than to encourage judges, such as those who preside over our courts of first instance, to enforce or invalidate contracts, according to their personal views of the undefined requirements of morality and public policy. Under such encouragement as I have last referred to, the action of our courts is likely to become very unequal; for, obviously, the courts presided over by a Divisional Judge holding such views as those expressed by Mr. Thorburn, would interpret contracts to pay money in a widely different sense, from courts presided over by such a judge (for instance) as Mr. Roe. The duty of judges to ascertain completely the contracts into which litigants have entered, and to affirm those contracts by their decrees, should not be weakened; but should be affirmed. And the officers presiding in the lower courts should not be encouraged to flinch from that duty, because a contract seems to them a hard one, or to stretch in class interests arguments of undue influence and public policy. Debtors should not be further demoralised by the uncertain hope that, if they go before the courts, the promises by which they induced a creditor to advance money can be evaded.

But, on the other hand, in a country such as the Punjab, creditors may reasonably be told that the Government does not undertake to give them their pound of flesh without reserve; and that while, on the one hand, contracts will be fairly ascertained and enforced, the courts will not use their power unreservedly for the recovery of high rates of interest. We should thereby express no condemnation of such rates, which indeed are more necessary than it is usual to admit. We should merely declare that we acknowledge on the part of the Government a stricter obligation to recover the principal of a debt, than to recover an accumulated interest charge which has reached an aggregate amount probably much exceeding what was contemplated by either party, or at least by the debtor, when the contract was entered into.

12. And as to other points in our execution procedure, I think it is undoubtedly capable of improvement. While I do not agree with some of the suggestions made in this correspondence, (as for instance that where a man has borrowed money or run up an account, the court should compel the creditor to

accept cattle at a valuation in payment of the debt), I think that the arrangements at present possible in our courts of first instance, for the attachment and sale of moveable property, are of the most crude and wasteful character. On the one hand the debtor has every possible facility for concealing his moveable property, and on the other hand it is impossible to believe that such property as is attached and sold realises (especially in the case of cattle) its fair value. I am inclined to say that no more certain process for failing to realise the full value of attached moveable property can be devised than that of auction at the court of a Tahsíldár and Munsiff. I also think it probable, indeed almost certain, that the rules against the summoning of agriculturists at harvest time are not at present sufficiently stringent.

13. In conclusion, I hope the general sense of the views expressed by me will not be misunderstood. I depreciate any impatience of difficulties, which are much rather the outcome of the character and circumstances of some sections of the population, than of any changes introduced by British rule. Nor do I think that these difficulties can be rapidly removed by any changes of law and procedure. That our law has aggravated some of these difficulties, I think we are bound to admit; and from time to time, as opportunity occurs, such changes should be introduced into our Revenue and Civil Procedure, as are shown by experience to be necessary. In respect of Revenue Procedure, I believe that the orders of Government, issued in consequence of the report of the Famine Commission, if steadily kept in view, will provide all the relief that is necessary.

In Civil Procedure we should be careful to do nothing which will weaken the security of contracts. The straining after codes and systems of abstract excellence is not now likely to be carried further; and in its place we should endeavour to initiate measures intended to reduce legal technicalities, to associate the village headmen with the petty courts of first instance, to recognise the undoubted dissatisfaction of the agriculturists with our present limitation law, to remedy the wasteful and ineffective character of the present processes against the person of the debtor and against his moveable property, to modify, in deference to the dictates of mercy and of expediency, their too stringent enforcement, and especially to put restraints on the employment of the extreme processes of the law in the recovery of extravagant charges for accumulated interest. Even a limited programme of this nature is likely to prove sufficiently difficult of execution; but I nevertheless think it is required of us.

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